

MINUTES
OF THE
ENVIRONMENTAL PROTECTION COMMISSION
MEETING
SEPTEMBER 4, 2007

INGRAM OFFICE BUILDING
7900 HICKMAN ROAD
URBANDALE, IOWA

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MEETING MINUTES

CALL TO ORDER

The meeting of the Environmental Protection Commission was called to order by Vice Chairperson Mary Gail Scott at 10:00 a.m. on September 4, 2007 in the Ingram Office Building, Urbandale, Iowa.

COMMISSIONERS PRESENT -

Suzanne Morrow, Secretary
Darrell Hanson, Chair – arrived at 10:10
Ralph Klemme
Charlotte Hubbell
Mary Gail Scott, Vice Chair
David Petty – arrived at 10:15
Susan Heathcote – arrived at 10:10
Paul Johnson

COMMISSIONERS ABSENT

Henry Marquard

ADOPTION OF AGENDA

Move the manure on soybeans item after public participation and move up the UAA discussion.

Motion was made by Charlotte Hubbell to approve the agenda as amended. Seconded by Ralph Klemme. Motion carried unanimously.

APPROVED AS AMENDED

APPROVAL OF MINUTES

Motion was made by Sue Morrow to approve the minutes of the August 7th meeting as presented. Seconded by Charlotte Hubbell. Motion carried unanimously.

APPROVED AS PRESENTED

DIRECTORS REMARKS

Director Richard Leopold briefed the Commission on the following items:

- ❖ Attending the Missouri River Association of States and Tribes meeting in Montana next week.
- ❖ The Governor is finalizing his leadership agenda for next year. The Department has had a lot of input on energy, energy efficiency and conservation and recreation issues.

- ❖ The Department will be assisting the new Office of Energy Independence on the structure of their bureau. There is a press conference today announcing Royce Stanley as the new czar for the Office of Energy Independence.
- ❖ The Department is very pleased with the state fair and the attendance at the DNR building. We have requested and are researching to purchase the land adjacent to the DNR building.
- ❖ Sustainable funding continues to move forward. I'm very encouraged that a proposal or bill will happen yet this year. There hasn't been any organized opposition seen yet this far.

Charlotte Hubbell asked if the EPC will have a role in the Office of Energy Independence and/or developing the state energy plan.

Richard Leopold said that he will keep in mind the EPC if and when an opportunity may arise.

INFORMATIONAL ONLY

IOWA POLICY GROUP – MANAGING IOWA STORMWATER FOR QUANTITY & QUALITY

Pat Sauer, Stacie Johnson and David Osterberg presented information on the problem of stormwater pollution.

Water and our natural resources have defined Iowa since its earliest days, as noted in the state's 1857 Constitution. But those "blessings hitherto enjoyed" by our forefathers face vastly different pressures 150 years later. Iowa's population in the 20th Century made a huge shift from farm to city. During this shift, growing cities and their abundance of concrete and asphalt have replaced woodlands, wetlands, and fertile Iowa farm ground.

Historically most rainfall in Iowa was absorbed by the surrounding landscape, only becoming runoff during large storms after the soil became saturated. Later, native ecosystems were replaced with streets, rooftops, driveways, sidewalks, parking lots and suburban lawns on compacted sub-soil. These landscape changes prevent the infiltration of rainwater and shortened the time it takes for runoff to move across the landscape into receiving waters such as creeks, streams, rivers, lakes and wetlands. The longer that journey, the better the filtration of pollutants found in stormwater runoff. Urbanization has increased the variety and amount of pollutants transported to receiving waters via the storm drain system.

Hot stormwater runoff, or thermal pollution, is one of many such pollutants. Other typical urban pollutants are sediment from unprotected soil during construction; oil, grease, toxic chemical and heavy metals from automobiles and manufacturing facilities; nutrients and pesticides from turf management and gardening; viruses and bacteria from failing septic systems; and road salt and sand. Sediments and trash are the largest volume of pollution sent to receiving waters from urban areas. In older parts of many cities, polluted runoff is often released directly into the closest water body without any treatment. A myriad of problems are caused by water pollution.

including contaminated drinking water, fish kills and adverse effects on outdoor activities such as fishing, swimming or just wading in local creeks.

QUANTITY vs. QUALITY

Traditionally, storm sewers in urban areas were designed to provide efficient drainage for the increased volume of stormwater runoff due to land development. This “out of sight, out of mid” philosophy was to drain excess water away from developed sites as fast as possible. With a few exceptions, a transition from effective drainage to a controlled release of urban runoff through stormwater detention was made in Iowa during the 1990’s. This change occurred due to problems with urban flooding, which is a quantity issue, rather than a quality issue.

With detention, stormwater runoff is no longer conveyed directly to receiving waters. Instead, it is routed to a basin designed to control runoff release at a rate that mimics that of its pre-developed state, for large storms (such as a five year storms or storms with 4-inch rainfall in 24 hours). Two downsides come with this approach:

- ❖ First, some argue that detention actually exacerbates flooding by only addressing the rate at which runoff is released. Since rainfall does not infiltrate, it is discharged more slowly than when it was flushed away, but not as slowly as if the rain had fallen on undeveloped green fields.
- ❖ Second, detention does nothing for stormwater quality as these basins are typically designed for large storms and end up passing the “first flush” events quickly into receiving streams.

Stormwater management has matured in Iowa, and attention to water quality has grown stronger.

WHO DOES WHAT?

Four entities in Iowa have regulatory authority for stormwater management; the Iowa Department of Natural Resources (DNR), U.S. Environmental Protection Agency, regulated municipal systems (generally, larger Iowa cities and state universities) and Soil and Water Conservation Districts. In addition, government agencies, nongovernmental organizations and nonprofits and educational institutions provide non-regulatory assistance on stormwater management issues.

Funding for water-quality projects takes many forms – federal money through the 319 program, watershed improvement grants, low-interest loans from the State Revolving Fund.

WHAT ISSUES NEED ADDRESSING?

The majority of Iowans live in urban areas, a lifestyle that included lawn chemicals, sand, salt, sediment, trash, oil, grease, pet waste and other pollutants. Precipitation running off driveways, roofs, yards and sidewalks flows to storm drains and on to streams with little or no treatment. Public policy strategies can begin to better address this water-quality challenge and not just the water-quantity issues where current practice quickly puts pollution concerns out of sight and out of mind.

State Leadership

- ❖ *Use best practices in state-assisted projects.* The state should demonstrate its commitment to water quality. Iowa can require best-management practices in construction on state properties as well as construction of any facilities that receive state funding.
- ❖ *Help communities reach established goals.* Some communities permitted under federal requirements need better guidance to meet their permit requirements.
- ❖ *Enforce requirements of stormwater permits.* Better state enforcement would set a good example for communities, and encourage the private sector to take responsibility for water-quality as well. More enforcement and education.

Funding for Stormwater Quality Management

- ❖ *Dedicate stormwater permit fees to stormwater issues.* Not all such revenue now goes to stormwater issues. These funds could go toward education, outreach and enforcement.
- ❖ *Use environmental protection funds for the environment.* On every gallon of gasoline, Iowans pay a penny that was intended for use in cleanup due to underground fuel tanks and other water quality issues, but is not set aside for these purposes.
- ❖ *Continue efforts to fund urban stormwater projects.* Recent moves to redirect environmental funds toward urban stormwater practices should be continued.
- ❖ *Fund pollution prevention in urban areas.* The Iowa DNR can use federal grants to increase drinking water protection efforts.
- ❖ *Hire urban conservation specialists.* Staff dedicated to stormwater issues could help landowners and communities.
- ❖ *Allow use of REAP (Resource Enhancement And Protection) funds for urban projects.* Rules should allow money to be spent by urban and rural landowners on practices consistent with REAP.

For the complete report, please visit: www.iowapolicyproject.org

Wayne Gieselmann said that Iowa has a floodplain management law that goes back to 1957. Its emphasis is always on minimizing flood damages and not so much with water quality. The Department of Soil Conservation did just fund four new Urban conservationist positions. The Department is aware of a lot of the issues addressed today. It just takes resources.

Paul Johnson said that a major issue is regulatory vs. education. We need to recognize that certain agencies abilities in regards to enforcement and education.

Charlotte Hubbell asked if we could stop handing out permits to build in floodplains. Maybe we need to look at changing the laws to prevent building in floodplains.

PUBLIC PARTICIPATION

CLARE POLKING, from Boone County said that there are 21 homes within 1 mile from the proposed hog confinement and about 16 homes within a 2 mile radius. Our Board of Supervisors did not pass the matrix this year. They did not notify us of this hog confinement. Last week the DNR issued a permit despite our protest. We presented aerial photos of the proposed site and

locations of the wells. There was no record of the well being capped. Know they are going to spread 4,000 gallons per acre of manure right over that well. We have no record of the drainage tile on that land. He is proposing to inject 1 million gallons of hog manure on the land. The watershed in this area goes right into the Squaw Creek. There is no regulation for these people or enforcement. About 3,000 feet from this person's home is a severe asthmatic. He currently has to wear a mask when he goes outside. He was told by a realtor that his home is worthless. Something has to be done to stop the permit issues!

DAVID ROSMANN, member of Iowa Citizens for Community Improvement submitted the following comments: On behalf on the nearly 4,000 members of the Iowa Citizens for Community Improvement, I would encourage members of the Environmental Protection Commission to move ahead with the rule limiting the application of manure to soybeans with a complete ban after five years. No further debate is necessary. You have heard enough from both sides and it should be clear which direction to take. I will not repeat what's been said so many times. However, I will say this: Last February, I attended the public comment sessions held in Des Moines and Carroll. Individuals at both sessions admitted to injecting liquid manure on ground going to soybeans only to east the manure levels in their pits and get them through the summer. I feel the majority of farmers across the state realize that liquid manure applied to land in soybeans or that will be planted to soybeans is not necessary. It is time to clean up the state's waters, not allow people to take shortcuts to empty their manure pits and for custom applicators to make money contaminating our waters.

MARIAN GELB, Iowa Environmental Council submitted the following comments: The Iowa Environmental Council has serious concern about the Recreational UAA protocol and the high number of recreational use downgrades being proposed based on this proposed protocol. We are particularly concerned about three aspects of the protocol.

- 1) Failure of the protocol to recognize canoeing, kayaking and tubing on Iowa rivers and streams as primary contact recreation uses,
- 2) The narrow interpretation of stream conditions necessary to support primary contact recreation including a base flow maximum depth of at least 4 feet or an average depth of 1.64 feet for support of primary contact recreations, and
- 3) Failure to adequately assess public use areas and rural communities for children's' recreational uses.

Canoeing, Kayaking and Tubing are Primary Contact Recreation

First we would like to state that the Council believes that river canoeing, kayaking and tubing are primary contact recreation uses and we recommend that the Recreational UAA protocol should clearly state that any river or stream where these uses are either existing or attainable should be given an A1 primary contact recreation use designation. The definition of primary contact recreation already includes "water contact recreational canoeing" and the Council strongly believes that all of these activities involve "prolonged and direct contact with the water". This contact with the water is not "accidental or incidental" as A2 recreational uses are defined, but rather is planned for and deliberate (i.e. people where clothes and shoes that can get wet, keep their gear in water proof bags and tied to the canoe/kayak, and frequently stop along the way to swim in the river for fun and to cool off on a hot day.)

This change in the protocol would assure primary contact recreation protection for small rivers such as the Middle River in Guthrie, Adair, Madison and Warren Counties. The Recreation UAA posted on the DNR website for the Middle River recommends an A2 designation for the entire 101 mile stretch of this river based on average depth of 11 inches, with only 1 location having a maximum depth over 4 feet. This recommendation was made despite the fact that the UAA identified 4 canoe access points (actually there are more than 4 access points based on the Iowa Sportsman's atlas and the book Paddling Iowa). In fact, an 8.6 mile stretch of the Middle River in Madison County (from Roseman Covered Bridge to Pammel State Park) is included in the book "Paddling Iowa, 96 great trips by canoe and kayak".

Reliance on water depth as main criteria for primary contact recreation

The Middle River UAA illustrates one of the main problems we see with the proposed Recreational UAA protocol, and that is the reliance on water depth as the main criteria for determining if primary contract recreation is attainable. While we recognize that water depth and flow are important factors in attainability of primary contract recreation, we would recommend that water depth be only one of the many factors. We further disagree with the arbitrary use of a maximum of 4 feet or average depth of 1.64 feet at base flow as a requirement to support primary contact recreation.

Failure to adequately assess Public Use Areas and rural communities for kids play

Based on our review of the UAAs, public use areas and proximity to rural communities along the assessed segments have not been adequately documented and assessed. Referring again to the Middle River UAA, the UAA conclusions state that "Children's recreation is not expected to occur at elevated frequencies due to the majority of the river being in rural areas with low populations; therefore, children's' recreation is not recommended due to the minimal occurrences of use." This conclusion is arrived at despite the fact that evidence of reaction was found at 14 of the 16 assessed sites, including footprints and remnants of kids play at some of the sites.

The Middle River flows thorough several public use areas including:

- ❖ Middle River Forest in Adair County with tent camping, hiking trails, stream fishing, canoe access and hunting.
- ❖ Pammel State Park in Madison County with camping, picnicking, hiking, stream fishing and canoe access
- ❖ Middle River Outdoor Education Center in Madison Co. (operated by Madison County Conservation Board) with picnicking, hiking, stream fishing, canoe access.
- ❖ Redrock wildlife area in Warren county with timber, wetland areas and hunting.

There is little discussion in the UAA about activities in these areas and no documentation in the UAA of discussions with state and county officials responsible for managing these areas regarding common activities involving children.

The Middle River flows through or near many rural communities.

- ❖ In Guthrie county the river flows near the town of Casey (pop. 441)

- ❖ In Madison county the river flows through the towns of Patterson (pop. 128) and Bevinton (pop. 67) and along the south side of Winterset (pop. 4200)
- ❖ In Warren county the river flows through the edge of the town of Martensdale (pop. 491)

There is no discussion in the UAA of contacts with city or school officials, civic groups or others who would be knowledgeable regarding common recreational activities involving the towns children.

Because many Iowans live and recreate in rural areas of the state, failure to adequately document and assess recreation uses in rural communities, parks and other public use areas for kids play is not protective of Iowa's children living and recreating in these areas.

JACK TROEGER, a retired high school science teacher from Ames. I know how science works. One thing that is frustrating, is that science gets used incorrectly. The issue of spreading manure on soybeans is one example. Most of the studies that are pointed out by people who claim that there is a benefit from spreading manure on soybeans are interest groups and you need to look at the entire stack of data.

I want you to think really hard about being able to take all of the scientific data that you have been exposed to in the last few years regarding the manure on soybean issues. It's the cluster of data that say manure on soybeans is not necessary. No exceptions! No excuses! No compromises!

NIELA SEAMAN, director of the Sierra Club addressed the rule on prohibiting manure to soybean ground. The department is recommending that you approve publishing and collecting comments on the summary of the regularity analysis requested during the comment period for the proposed rule. This rule limits the application of liquid manure on soybean fields. I reviewed the minutes on when this issue first came up. While there was opposition to this rule because of a claim that there was no scientific evidence to indicate manure on soybeans contributes to water pollution, there was also only antidotal evidence presented that it contributes to an increased crop yield. We believe this commission should error on the side of caution. We also believe that since the last commission approved the NOIA to move forward, receiving public comment serves no purpose rather than delaying the passage of the rule. We support moving forward with the rule and encourage you to support that today. We also support Steve Veysey's comments.

STEVE VEYSEY, submitted the following comments:

The Recreational UAA protocol Notice of Intended Action presented to you today is deficient in several critical areas.

- 1) The protocol allows the use of low flows [40 CFR 131.10(g)(factor 2)] as a deterrent for removing A1 recreational protection. This is explicitly forbidden by EPA. Quoting from EPA "Water Quality Standards Handbook" Second Edition:

“Physical factors, which are important in determining attainability of aquatic life uses, may not be used as the basis for not designating a recreational uses consistent with the Clean Water Act goal. This precludes States from using 40 CFR131.10(g) factor 2 (pertaining to low-flows) and factor 5 (pertaining to physical factors in general). The basis for this policy is that the States and EPA have an obligation to do as much as possible to protect the health of the public. In certain instances, people will use whatever water bodies are available for recreation, regardless of the physical conditions”.

More recently, from the federal register ANPRM 63 July 7, 1998, quote:

“EPA’s current thinking is that physical factors, alone, would not be sufficient justification for removing or failing to designate a primary contact recreation use.”

And finally, from EPA Region 7’s own letter to DNR earlier this year:

“Recreational use decisions are inherently biased. A swimmer will seek out pools in a waterbody suitable for recreation, regardless of whether the pools are representative of the waterbody segment.”

- 2) The protocol does not require a comprehensive investigation and outreach to determine whether recreation is an existing use. Existing uses are those uses that have been attained since November 28, 1975. A reasonable information threshold, including historical information, must be established and required before the recreational presumption can be rebutted. This protocol does not do that. In fact, based upon implementation of the protocol before you today, the majority of the proposed recreational use downgrades posted on DNR’s website do not include ANY current or historical testimony from local residents, county conservation boards, parks and rec personnel, surveys of teachers and school children, Boy Scout troops, 4H clubs, and a host of other legitimate, knowledgeable information sources.

INTRODUCTION

The rebuttable presumption established by this commission in 2006 is meaningless unless an appropriate information threshold is established to show with reasonable certainty that recreational uses have not occurred at any time since 1975, and that those uses are not attainable.

Under Iowa law, only the commission can establish or change water quality standards (WQS). Also under Iowa law, only the commission can adopt rules that establish procedures and criteria to be used in the development of a use attainability analysis. Therefore it is the commission’s responsibility to establish the correct information threshold a UAA protocol should be structured to produce in order to rebut the “fishable/swimmable” presumption.

As a practical matter, it is perfectly correct that DNR staff should develop rules and present them to the commission for approval, however, those rules should be developed within a clear framework of expectations and requirements expressed by the commission. In this instance, that has not happened. The commission has not had the opportunity to provide guidance or establish the framework within which DNR staff developed the UAA protocol. Therefore, there is no

reason to expect that the current draft proposed by DNR reflects or even approximates the wishes of the commission.

Again, as a practical matter, it becomes much harder to make significant changes to a proposed rule once you move forward with an NOIA. Not impossible, but much more difficult. Clearly, to avoid even more delays, the NOIA should reflect at least to a first approximation, the wished and the vision of the commissioners. All I ask for today, is that before you approve this NOIA, you be sure that this protocol is the step you want to take to implement the rebuttable Presumption of Quality this commission had the courage and wisdom to pass eighteen months ago. If not, than please, consider taking just one small step back. Discuss your concerns among yourselves; ask Ann Lavety and John Delashmit questions. Reach a consensus and then provide DNR with additional guidance so that the next time a draft protocol is brought before you, you have some ownership of it. Isn't that how this process is supposed to work?

-----End of Public Participation-----

NOTICE OF INTENDED ACTION - REGULATORY ANALYSIS: CHAPTER 65-SUBRULES PROHIBITING LIQUID MANURE/SETTLED OPEN FEEDLOT EFFLUENT APPLICATION TO SOYBEANS

Gene Tinker, Animal Feeding Operations Coordinator presented the following item.

At the Commission's December 12, 2006 meeting, the Commission approved a Notice of Intended Action (NOIA) for proposed rules that would limit liquid manure and settled open feedlot effluent application to a planned or growing soybean crop. The NOIA was published in the Iowa Administrative Bulletin Bol. XXIX, No. 14 on January 3, 2007. During the public comment period, a request for Regulatory Analysis was received. The department requests the Commission's approval to publish and collect comments on a summary of the Regulatory Analysis.

I. Introduction

Subsection 1 of Iowa Code section 17A.4A, states that upon written request by the administrative rules review committee or the administrative rules coordinator or 25 small businesses or an organization that represents them, an agency shall issue a regulatory analysis of a proposed rule that complies with subsection 2 of Iowa Code section 17A.4A. The elements to be included in the regulatory analysis are specifically identified as follows:

A description of the classes of persons who probably will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule.

A description of the probable quantitative and qualitative impact of the proposed rule, economic or otherwise, upon affected classes of persons, including a description of the nature and amount of all of the different kinds of costs that would be incurred in complying with the proposed rule. The probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues.

A comparison of the probable costs and benefits of the proposed rule to the probable costs and benefits of inaction.

A determination of whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rule.

A description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency and the reasons why they were rejected in favor of the proposed rule.

Specific to small businesses, Iowa Code section 17A.4A(2)(b) requires that an agency consider whether it would be feasible and practicable to do any of the following to reduce the impact of the rule on small business:

- (1) Establish less stringent compliance or reporting requirements in the rule for small business.
- (2) Establish less stringent schedules or deadlines in the rule for compliance or reporting requirements for small business.
- (3) Consolidate or simplify the rule's compliance or reporting requirements for small business.
- (4) Establish performance standards to replace design or operational standards in the rule for small business.
- (5) Exempt small business from any or all requirements in the rule.

The Department of Natural Resources (Department) has received a regulatory analysis request from the Iowa Commercial Nutrient Applicators Association and is providing the following regulatory analysis for **ARC 5636B**. Each of these elements will be addressed in turn following a summary of the background of the proposed rule making.

II. Background

The Environmental Protection Commission proposed rules to limit the application of liquid swine manure or settled open feedlot effluent to land that is currently planted or will be planted to soybeans. The proposed rules were approved for public comment by the Commission at its December 12, 2006 meeting, and the proposed rules were included in a Notice of Intended Action published on January 3, 2007 in the *Iowa Administrative Bulletin* as **ARC 5636B**.

Previous research has shown that subsurface tile drainage from row-crop, agricultural production systems has been identified as a major source of nitrate entering surface waters¹. Nitrate losses are highly related to cropping system, with row crops such as corn and soybeans yielding much greater drainage volumes and nitrate-N concentration in the drainage water than perennial crops such as alfalfa and CRP grass/legume mix. The nitrate-N losses can be 30 to 50 times higher in row crops than perennial crops².

It is widely known that Rhizobium bacteria will fix atmospheric nitrogen through a symbiotic relationship with soybeans. The soybean plants can then utilize that nitrogen to produce grain. It is also known that soybean plants will preferentially use nitrogen already in the soil rather than produce more nitrogen. Soybeans use the greatest amount of nitrogen later in the growing season. But about two-thirds of annual drainage and nitrate loading occur in April, May and June when evapotranspiration is low compared to precipitation³. Since manure would usually be applied to the crop ground prior to planting the soybean crop, the nitrogen in that manure could be more prone to loss through drainage tile.

The result of liquid manure or settled open feedlot effluent application to fields to be planted to soybeans is additional nitrogen (and other nutrients) available in the soil during the months when tile drainage is generally the greatest. This potentially could increase the amount of nitrogen that can enter surface waters through tile drainage systems, having a detrimental effect on the quality of those surface waters.

Commercial nitrogen is not normally applied to a soybean crop since it is an unnecessary expense. If liquid manure or settled open feedlot effluent application is not allowed on fields to be planted to soybeans, that liquid manure or settled open feedlot effluent would be available for application to fields that would otherwise receive commercial nutrient applications. By replacing the commercial nutrients with manure nutrients, less nitrogen is introduced in the cropping system, which could result in less nitrogen being transported to surface waters. This is because there could be less total nitrogen applied to all crop production fields in the state. The net result could be an improvement in surface water quality.

III. Elements of the Analysis

A. Description of the classes of persons who probably will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule.

All Iowans could be affected by the proposed rules. Owners and operators of confinement feeding operations required to have a manure management plan (MMP) and owners and operators of open feedlots with a nutrient management plan (NMP) could be affected as there would be limitations on where liquid manure and settled open feedlot effluent from their operations could be land applied. Crop producers who receive the manure nutrients could be affected if they utilize those manure nutrients to provide nutrients to soybean acres. Manure

¹ Gyles Randall, The Impact of Climate and Agricultural Practices on Nitrogen Losses in Tile Drainage in Minnesota, Hydrol. Sci. & Tech. 18:187-195 (2002).

² G.W. Randall and M.J. Goss, Nitrate Losses to Surface Water through Subsurface, Tile Drainage, In R.F. Follet and J.L. Hatfield (Eds). Nitrogen in the Environment: Sources, Problems, and Management. Pp 95-122. Elsevier Science B.V. Amsterdam (2001).

³ Gyles Randall, The Impact of Climate and Agricultural Practices on Nitrogen Losses in Tile Drainage in Minnesota, Hydrol. Sci. & Tech. 18:187-195 (2002).

applicators, both confinement site and commercial, could be affected as they may be required to transport manure greater distances to apply manure to fields that will not be planted to soybeans. The applicators may also need to invest in new equipment if they apply manure nutrients to soybean acres at the reduced rate. Iowans traveling on roadways could be impacted as manure application equipment could spend more time on roadways if hauling distances are increased.

The financial costs of the proposed rules will be borne by the entities that must pay to have the manure hauled and land applied. If manure must be transported greater distances to land apply, there will be added expense and labor involved with hauling greater distances. New equipment may be required for applicators to be able to apply at a reduced rate. Commercial manure applicators will be able to pass on that expense to the entity that pays for the manure hauling and application. This could be the animal feeding operation owner, the operator of the farm ground that receives the manure nutrients, or some combination of both. Confinement site applicators will bear the cost themselves, although some may receive compensation from neighboring land owners that receive manure. Owners of the feeding operations may be required to develop new MMPs or NMPs. This will require additional time on their part or additional fees from entities they may hire to develop their plans. In the end, the agricultural producers that benefit from manure removal, hauling and application will bear the additional costs resulting from the proposed rules.

All Iowans could benefit from improved water quality that may result from implementation of the proposed rules. In addition, municipalities could benefit through reduced costs to treat water prior to use by the public. An example is the city of Des Moines, which operates a nitrate removal facility to remove nitrate in order to keep nitrate-nitrogen below 10 mg/L.

B. A description of the probable quantitative and qualitative impact of the proposed rule, economic or otherwise, upon affected classes of persons, including a description of the nature and amount of all of the different kinds of costs that would be incurred in complying with the proposed rule.

Adequate land is available in the state for proper application of all manure produced in the state. Less than 20 percent of corn acres that receive nutrient applications get the nutrients from manure⁴. In fact, Iowa has adequate crop production land to properly utilize the manure produced by all hogs and cattle fed in the US⁵. So land availability for proper manure application is not an issue. But the proximity of the crop production fields to the manure producing livestock units could be an important issue. Many MMPs include more application land than is required for proper application, so a restriction on application to soybeans probably would not result in a shortage of application land, but could decrease the application possibilities.

The actual increased costs for manure application under the proposed rule is nearly impossible to determine, due to the many variables involved with how much application would change. Implementation of the proposed rule would probably result in increased application costs, due to greater hauling distance for application, requiring more fuel usage and labor demands. In addition some facility owners would be required to develop and file new MMPs or NMPs if their current plans include manure application to soybeans.

C. The probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues.

The proposed rules will not greatly impact the department. Reviews of MMPs and NMPs may take slightly more time as there will be another restriction to be checked, but it should not greatly impact review time. Additional staff time could be required during field inspections to insure compliance with the proposed rule.

There will be no impact on state revenues.

D. A comparison of the probable costs and benefits of the proposed rule to the probable costs and benefits of inaction.

The costs for implementing the proposed rules are nearly impossible to calculate, but would include increased costs for hauling manure greater distance (in fuel,

⁴ Manure vs. commercial fertilizers: It's the same thing, Iowa Pork Producers Association, second edition.

⁵ Bruce Babcock, Is Now the Time to Raise Livestock?, Presented at "Farming Matters", March 28, 2006 (labor and equipment wear), additional equipment expense to allow application at reduced rates, possible redevelopment of MMPs and NMPs that include manure application to soybeans, and some additional department staff time for review of plans and compliance assurance. The benefits are also nearly impossible to determine as it is unknown how much nitrate-nitrogen will be reduced in the state's surface waters, so it is unknown how much water treatment plants can save in reduced treatment.

Assuming the manure nutrients that would be applied to soybeans would instead be applied to crop production land that would otherwise receive commercial fertilizer applications, those crop producers may pay less for nutrient application to those crop production fields. This would result in commercial fertilizer dealers selling less commercial fertilizer, resulting in decreased profits for their companies.

A restriction of manure application to soybeans could result in decreased soybean yields in some fields. This is a clear conflict between maximum yields (and economic benefit) vs. improved water quality – the standard debate of economy vs. environment. If the yield depression were too great, producers would be able to apply commercial fertilizer to those fields, which would not be in conflict with the proposed rules.

The benefit of cleaner water for the state is difficult to measure, especially without evidence of how much improvement there would be if the proposed rules are implemented.

Therefore it is impossible to compare the costs and benefits of implementing the rules with the results of inaction.

E. A determination of whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rule.

The overall purpose of the proposed rule is to improve the quality of Iowa's surface water for all Iowans. There are numerous sources of impairment to the state's surface waters and implementation of the proposed rule may result in only a small improvement in water quality.

There is probably no less costly method of trying to reduce nitrates in surface waters than by decreasing the application of nutrients that aren't necessary. An alternative and possibly more cost prohibitive method would be to restrict manure applications to the period of the crop's

growth cycle when nutrient demand is the greatest. Most manure is applied to crop ground in the fall after harvest or the spring prior to planting. But the crop's greatest demand for nutrients is later in the growing season. So the nutrients are present in the soil profile waiting for the crop's time of greatest need, sometimes up to 9 months. The nitrogen is susceptible to movement to tile lines during this time. So an alternative could be to limit manure application to the period of the growing season when crops have the greatest demand for nutrients. However this alternative is probably less appealing due to a more restrictive time frame for manure application and the need to apply between the rows of a growing crop, which can be very challenging.

F. A description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency and the reasons why they were rejected in favor of the proposed rule.

There were no alternative methods considered for achieving the purpose of the proposed rule. The proposed rule is probably the most acceptable method for attempting to reduce nitrate loss to drainage tile with subsequent impairment to surface waters. However there is no estimate of how much improvement there could be in surface water quality.

The initial proposal was a complete ban on liquid manure and settled open feedlot effluent application to soybeans. However the proposed rules delay the complete ban for five years and restrict the application to 100 lbs of nitrogen per acre as recommended by Iowa State University.

G. Iowa Code section 17A.4A(2)(b) considerations

As stated previously, the complete ban would be delayed for five years and an associated study of any new research available six months prior to the end of that five year period would be considered prior to implementation of the ban. This is a less stringent schedule than previously proposed.

Reporting requirements for small businesses would be the same as without adoption of the proposed rule. Performance standards are not known, since the benefit that will be attained is difficult to measure, and therefore a performance based standard is not feasible. Exempting small businesses from the proposed rule would defeat the purpose of the rule.

H. Iowa Code 17A.4A(3) considerations

There is no data on the actual impact the proposed rule could have on the quality of the state's surface waters. Although studies show a connection between nitrogen nutrient applications and nitrogen losses through drainage tile lines, there have not been studies conducted to examine the practices to be limited by the proposed rule.

The short-term and long-term consequences of the proposed rule would be increased manure application costs for some livestock and/or crop operations with an unknown improvement in quality of the state's surface waters.

Mary Gail Scott asked what the Commission's options are in regards to this rulemaking.

Randy Clark, DNR Attorney went through the various options.

Charlotte Hubbell asked why we didn't make knifing in of manure a requirement.

Gene Tinker responded that we may not have the authority to make that a requirement.

Charlotte Hubbell made a comment on Section III – Elements of the Analysis, Part D second to last paragraph. *"The benefit of cleaner water for the state is difficult to measure, especially without evidence of how much improvement there would be if the proposed rules are implemented."* I would disagree with that assessment. I think it would be difficult to list costs but the benefits of cleaner water could be listed such as economic benefits, tourism, increase of the quality of life to residents in regards to swimming and fishing.

Darrell Hanson said that it can be difficult to give numbers on how much things will be improved or how much nitrates will be reduced. Things can be real but not measurable.

Susan Heathcote said that it would be logical to assume that there will be some improvements in water quality, we just don't know how much improvement there will be.

Charlotte Hubbell said that we should still list the benefits of having clean water.

Mary Gail Scott said that we can't assume that those benefits will be reaped because of this rule.

Ralph Klemme said that he has raised soybeans for the last 47 years. The odor is why the manure is injected most of the time. If the manure is sprayed on top of the ground I believe you must cover it by the end of that day. I have used fertilizer on soybeans many times and I do benefit from that. We need to be careful on the road we are taking. I take many tests, last year I sprayed fuller nitrogen on my soybeans and there was half a bushel more per acre. If we want to cut production, we're just going to have to stop using all of it and we'll end up paying dearly for our food. I don't believe farmers are using excessive fertilizer, it costs way too much. I can not support a cap on the amount of manure that we can apply to soybeans. Smaller farmers may not have the amount of acres it takes to apply what manure they have, so it may require them to apply more.

Paul Johnson said that he talked with a number of nitrogen scientists and asked the specific question about applying manure to soybeans. The common response was that 200 lbs. of nitrogen going to soybeans is excess and that there is a good chance for excessive leaching. Around 100-125 lbs. is considered by the people I talked to, as being a good number. We don't pass laws for the average, we pass laws for the extremes and the vandals. The other problem that we have is that we have animal agriculture that is rapidly decoupling from land, and we end up with manure disposal problems.

There are responsibilities that we each have as individuals. The disposal of nitrogen supply to make more money today and using more fossil fuels is not looking at the big picture and the future of our environment.

Motion was made by Susan Heathcote to approve moving going to the public for comment on the NOIA - Regulatory Analysis: Chapter 65-Subrules prohibiting liquid manure/settled open feedlot effluent application to soybeans as presented. Seconded by Sue Morrow.

Darrell Hanson said that he was and is in favor of the limit for the amount of manure that can be applied to soybean ground and even at the 100 lbs limit but not in favor of the ban.

David Petty asked if the DNR would have a difficult time in trying to enforce this new rule and does the DNR feel that they would be able to determine that the water quality in Iowa is better?

Richard Leopold said that it will be difficult to quantify the results. There are a lot of variables.

Gene Tinker said that this would be included in the Manure Management Review as well as the record management review. The staff will meet with the producers to see if they have documented the rates properly.

Charlotte Hubbell asked if there is a statutory requirement as to the period time which regulatory analysis have to be done after a request has been made.

Ed Tormey said there is no time limit.

Charlotte Hubbell asked Commissioners if they have seen the nitrate results from the Raccoon River for 2007. In 2007, saw a spike of 7,098 tons of nitrogen, the previous year was 803 tons. That is eight times the previous and twenty times the year before that. The seven year average is approximately 600 tons.

David Petty gave an example of his operation. He lives on the river and about 17 miles of creek that runs through his operation. For the past six years, ISU has been doing about five research monitoring studies to measure the soil runoff. Soil runoff practices can make nitrates spike. The result of that study is from run-off.

Richard Leopold said that rain events are a contributing factor as well as tillage practices, commercial fertilizer, decoupling of animal agriculture and etc. This is a systemic problem.

Susan Heathcote said that this isn't just an Iowa issue. This year when they measured the hypoxic zone down in New Mexico, the results were the third largest since 1985. There will be pressure at a national level. It is important for Iowa to show that we are doing what we can to address the problem. This maybe a small first step but we are demonstrating that we are doing what we can.

Charlotte Hubbell asked the department to find an entity to prepare a contract to study this issue over the next five years. I would like to see this happen after the rule passes.

Mary Gail Scott said that she wouldn't support that because there are better ways to spend our money. I believe the industries that are effected can spend their money giving us the data that

we need. If we can't trust the integrity of our researchers because of the source of the money than we are in deeper trouble than we can fix.

Gene Tinker said that the legislature has designated money to ISU to study this issue.

Roll call vote went as follows: Susan Heathcote – aye; Sue Morrow – aye; Ralph Klemme – nay; David Petty – nay; Paul Johnson – aye; Mary Gail Scott – aye; Charlotte Hubbell – aye; Darrell Hanson – aye. Motion carried.

APPROVED AS PRESENTED

BUDGET OVERVIEW

Linda Hanson, Administrator of the Management Services Division presented the following item.

The Commission was provided with a Budget Reference notebook relative to the Department's Fiscal Year (FY) 2008 Operating and Capital Budget.

The Notebook is intended to provide the Commissioners with an overview of the major revenue sources available to fund the DNR programs, both operations and capitals; a brief review of expenditures; and the recent history of appropriations by the Iowa General Assembly.

The Notebook is divided into four sections. Section 1 addresses the question of "Where does our money come from" while Section 2 discusses "Who (organizational unit) is spending this money." Section 3 focuses on our spending plans by providing information on "What is the money being spent on." Finally, Section 4 summarizes "What money does the Iowa Legislature appropriate."

The DNR's budget is characterized by a large number of separate and distinct revenue sources. Only 17% of the current operating budget is appropriated from the State's General Fund. The remainder includes a large number of federal grants, and dedicated or earmarked funds. The Department is funded from approximately 200 different funding sources. Within major sources, additional layers of earmarking further constrain expenditures.

Examples of earmarked revenue include fishing and hunting license fees; hazardous waste fees; Resource Enhancement and Protection Fund; various groundwater related fees; agricultural lease income from the Army Corps of Engineers' Reservoirs, and Oil Overcharge settlements.

Usage of dedicated state revenues, in addition to the annual appropriation action of the General Assembly, is governed by the provisions written into the permanent chapters of the *Iowa Code*. Federal fund expenditures are directed by various federal laws, rules, and interpretations by federal grantor agencies. Within this framework, the DNR must consider legislative intent,

direction from the Governor's Office, and policy action by both commissions when budgeting these funds.

Charlotte Hubbell asked what pool of funds does enforcement money come out of.

Linda Hanson said that would be in Field Services and Compliance as well as in Legal.

Wayne Gieselman said that there is about \$8.6 M for Field services and compliance and most of our enforcement actions come out of that fund.

Charlotte Hubbell asked where we can ask for an increase for enforcement.

Linda Hanson said that adding more money for staff in the Field services and Compliance bureau could help in enforcement.

Paul Johnson said that there does need to be more enforcement as well as more staff to work with Iowans.

INFORMATION

BUDGET REQUEST FOR FY 2009

Linda Hanson, Administrator of the Management Services Division presented the following item.

The Environmental Protection Commission's approval is requested for the Department's appropriation request for Fiscal Year (FY) 2009. FY09 marks the fourth year in which executive branch departments and agencies' budget requests are submitted via a process termed, "Purchasing Results." This process does not follow the traditional method of beginning with a base budget and adding and subtracting. Instead, it focuses on the results Iowans want from their state government. The Governor, Lt. Governor and, ultimately, the Legislature become buyers of government services on Iowans' behalf. The state agencies are sellers of these services.

The Purchasing Results process creates a marketplace where the buying team utilizes targeted monies to buy the best "Offer" that will most effectively produce the greatest results.

For all activities the Department proposes to conduct in FY09 with appropriated funds, whether they be new, existing, or modified, Offers must provide a given result that will be evaluated against one another and compete with all other Offers for the dollars allocated to that result.

Each Offer will align with one of the Legislative Budget Subcommittees to achieve results.

Those seven Results Areas are as follows:

- Education
- Health and Human Services
- Economic Development
- Justice
- Agriculture and Natural Resources
- Transportation, Infrastructure, and Capitals
- Administration and Regulation

**DEPARTMENT OF NATURAL RESOURCES
FY 09 REQUEST**

APPROPRIATION NAME	FY 08 Appropriation	FY 09 Request	\$ Change FY 09 Request Over FY 08 Appropriation
<u>GENERAL FUND APPROPRIATIONS</u>			
Department Operations	\$20,244,822	\$20,244,822	\$0
Total General Fund Appropriation	\$20,244,822	\$20,244,822	\$0
<u>TOBACCO SETTLEMENT FUNDS</u>			
State Parks Health and Safety	\$0	\$0	\$0
Lake Water Quality Improvement	\$0	\$0	\$0
Total Tobacco Settlement Appropriation	\$0	\$0	\$0
<u>INFRASTRUCTURE</u>			
Lake Darling Shelter	\$0	\$0	\$0
State Parks Health and Safety	\$2,500,000	\$2,500,000	\$0
Lake Water Quality Improvement	\$8,600,000	\$8,600,000	\$0
Volga River	\$750,000	\$750,000	\$0
Lake Delhi	\$100,000	\$100,000	\$0
Carter Lake	\$500,000	\$500,000	\$0
Green Valley	\$100,000	\$100,000	\$0
Iowa's Special Areas - Public Private Partnership	\$0	\$0	\$0
Total Infrastructure Appropriation	\$12,550,000	\$12,550,000	\$0
<u>ENVIRONMENT FIRST</u>			
Resource Enhancement and Protection	\$15,500,000	\$15,500,000	\$0
Marine Fuel Tax Capitals	\$0	\$0	\$0
Rhodes Tire Reclamation	\$0	\$0	\$0
Lake Restoration Program	\$0	\$0	\$0
Air Quality Livestock Monitoring	\$235,000	\$0	(\$235,000)

Ambient Air Quality Monitoring	\$325,000	\$560,000	\$235,000
Water Quality Monitoring	\$2,955,000	\$2,955,000	\$0
GIS Data for Watershed Managers	\$195,000	\$195,000	\$0
Keepers of the Land Volunteer Program	\$100,000	\$100,000	\$0
Park Operations and Maintenance	\$2,470,000	\$2,470,000	\$0
Water Quantity	\$480,000	\$480,000	\$0
Animal Feeding Operations	\$360,000	\$360,000	\$0
Resource Conservation	\$300,000	\$0	(\$300,000)
Feasibility Studies for Regional Centers	\$0	\$300,000	\$300,000
Livestock Database	\$50,000	\$50,000	\$0
Water Supply Appropriation	\$500,000	\$500,000	\$0
Total Environment First Appropriation	\$23,470,000	\$23,470,000	\$0
<u>NON-GENERAL FUND</u>			
<u>APPROPRIATIONS</u>			
Fish and Wildlife Operations	\$37,626,733	\$37,626,733	\$0
Resource Conservation (Economic Development Forestry)	\$0	\$0	\$0
Marine Fuel Tax Capitals	\$2,500,000	\$2,500,000	\$0
NPDES Fund	\$700,000	\$700,000	\$0
Groundwater Fund	\$3,455,832	\$3,455,832	\$0
UST Administration Match	\$200,000	\$200,000	\$0
Snowmobile Transfer to Fish and Wildlife	\$100,000	\$100,000	\$0
Total Non General Fund Appropriations	\$44,582,565	\$44,582,565	\$0
TOTAL	\$100,847,387	\$100,847,387	\$0
TOTAL DEPARTMENTAL FTE	1147.43	1147.43	0.00

Linda Hanson said that the Governor requested each department to submit a status quo budget. We have done that with some minor adjustments. The amounts are basically the same. The three exceptions are under the Rebuild Iowa Infrastructure Fund. Our general fund request will be at \$20.2 M, we hope to see an increase at the end of the legislative session for salary increases.

Changes from last year's budget request:

- ❖ Regional center and Fairground feasibility study \$300,000
- ❖ Lewis and Clark Visitor Center \$2M
- ❖ Resource Conservation – taken out. All of that money was pass through that went to RC&Ds for various economic developments.
- ❖ Combination of the Air Quality Livestock to the Ambient Air Quality Monitoring

**Phase IV of the Green Valley State Park to City of Creston Trail Connection
\$100,000**

Key considerations:

- Starting in 1997, three trail grants have been received to construct a paved multi-purpose trail system through the city of Creston to the edge of Mitchell Marsh. They have utilized a combination of funding sources from REAP City grants, IDOT Enhancement funds, South Central Iowa Foundation, \$70,000 cash donations from 10 business and private individuals as well as some in-kind labor and materials.
- Phase four will connect the city system to a one-mile trail which will cross the Summit Lake Wildlife Management Area and connect to the Green valley State Park trail system on the southern boundary. This will provide for grading and surfacing the trail with crushed limestone. It will be paved in the future.
- Walking for health has increased in popularity. In addition, connecting the state park to the city will provide a safe travel route for children and adults on bicycle or on foot.

**Honey Creek Resort State Park
\$8,000,000**

Key considerations:

- A minimum funding gap of \$6M has been determined following the bid letting and subsequent construction for the \$19.3 M Lodge, Conference and Aquatic Center and the \$6M construction of the Audubon Certified Golf Course.
- The bids for 28 Cabins (group & family), and the estimates for the activity building, park shelters, additional trails and connecting, bridge some of which are required by the bonding indenture agreement, exceed available funds for the project.
- The Natural Resource Commission strongly supports additional \$4M (total of \$10M) ask to assure future contingencies and additional visitor attracting accommodations that will assure the long-term success of the Resort State Park.
- Additional visitor attracting amenities include: challenging and complete multi-use trail system, outdoor swimming pool, activities building, outdoor skill activities, and shelters that will be conducive to special and special event for learning and entertainment.
- DNR is aggressively seeking donations and grants for funding all or a portion of the funding gap.
- The moral obligation of the State requires adherence to strict timelines for opening major features in 2008, and repayment of the bonds requires that cabins and major features be completed no later than Spring of 2009.

**Flood Plain Management/Dam Safety Program
\$150,000**

Key considerations:

- According to Iowa Homeland Security and Emergency Management, *"Iowa's leading hazards are those associated with severe weather including, heavy rains and flooding . . ."* The Flood Plain Management and Dam Safety Programs are vital to ensuring the protection of human life and property in Iowa through implementing stringent requirements to reduce the impact of flooding in Iowa.
- \$150,000 will be used to fund program staff currently being funded from Stormwater permit fees.
- Iowa's Flood Plain Management Program is responsible for ensuring that construction of bridges and culverts in urban and rural areas meets the appropriate criteria for approval. Program staff review bridge applications to ensure that Iowa's roads and bridges are safe and passable during flood events by elevating them to pass a 100 year flood. Staff review also ensures that backwater is minimized so that upstream houses, buildings and agricultural land are not subjected to undue increased flooding as a result of the bridge or culvert.
- Iowa's Flood Plain requirements for bridges result in minimal damages to roads and bridges. Example: Following a Presidential Disaster Declaration for Linn County, it was reported that even the County Parks system had sustained more flood damages than the County Roads system. This is not unusual. It was similarly reported by several County Engineers following the 1993 floods that bridges designed to DNR specifications had sustained little or no damages, whereas other structures were severely damaged.
- The Department receives about 300 development applications annually that would change the flood plain in some way, such as a levee, bridge, channel change or bank stabilization. Each change has the potential to increase flood damages for people adjacent, upstream or downstream from the development area if not properly engineered. Imagine the impact 3,000 flood plain modifications would have on flooding in ten years if they are not reviewed by qualified engineer.
- A 1998 Return on Investment Study of Iowa's Flood Plain Management Program showed that flood plain management practices reduced damages caused by floods by about 65%. When applied to Iowa, this means that current flood damages of at least \$5 million could be averaging about \$14 million per year if flood plain management practices were not utilized. The return on investment of Iowa's Flood Plain Management program was calculated to be 2800% or \$28 returned for every \$1 spent.
- Potential flood damages that can be prevented or reduced include:
 - Direct damages to buildings, roads, bridges and other structures

- Sickness, injuries and deaths caused by flooding and the secondary effects of contamination, clean-up activities, gas line breaks, fires, loss of electricity and reduced refrigeration.
- Cost of rescue operations to reach people who are stranded or in flowing water
- Iowa has 3338 dams registered on the National Dam Inventory. Of those dams, 233 are subject to regular inspection. 2 dams are inspected on a 1 yr. inspection frequency due to structural problems, 83 dams are to be inspected on a 2 yr. frequency and 148 dam are inspected on a 5 yr. frequency.
- Iowa is last in the nation in regard to allocated FTEs per Dam (See Comparison below).
 - Missouri: 132 dams/FTE
 - Illinois: 299 dams/FTE
 - Minnesota: 375 dams/FTE
 - Iowa: 2618 dams/FTE

**Phase III of the Lewis and Clark Visitor Center
\$2,000,000**

Key considerations:

- Phase I and II have been completed on the keel boat interpretive center that included the construction of an outdoor boat interpretive plaza for the three historic replica boats floating on the lake and the construction of a 15,300 square foot building shell and the installation of a geothermal system. To date \$1,755,000 has been spent from a combination of funds from the IDOT, Dept. of Cultural Affairs, National Park Service, Monona County and IDNR.
- Phase III is estimated at \$1,400,000 to complete the entire building interior, parking lot and walkways. The DNR has secured another DOT Enhancement grant of \$400,000 to be used for this phase and also has a \$56,000 Iowa West grant. An additional \$544,000 will be needed to pave the parking lot and complete the lower level community room which will be available for weddings, family reunions and other gatherings.
- Phase IV is estimated at \$480,000 to fabricate and install the interpretive elements which are already designed.

**State Forester and State Ecologist
\$150,000**

State Forester - This position would:

- Establish new statewide, regional and national partners and nurture existing relationships to create and enrich an atmosphere of collaboration and partnership in addressing and responding to forestry opportunities and challenges.

- Bring together multi-disciplinary teams to develop and implement management strategies to enhance forest resources at a regional watershed level.
- Represent the forest resource interests of the Department at the state, regional and national levels.
- Serve as the silvicultural expert on forest management issues in much the same way that the State Geologist and State Entomologist serve as experts in their respective fields.

State Ecologist - This position would:

- Establish new statewide, regional and national partners and nurture existing relationships to create and enrich an atmosphere of collaboration and partnership in addressing and responding to natural resource ecosystem restoration issues.
- Seek out, demonstrate and evaluate restoration methodologies in cooperation with internal and external partners.

Mary Gail Scott asked where the additional environmental asks are?

Linda Hanson said that these items are status quo, besides three additional asks that are coming from the infrastructure fund, the other three are substitutes. The additional asks have already been authorized by the buying team.

Mary Gail Scott said that we talked about other additional environmental budget asks. I don't believe the information presented today reflects those additional asks.

Linda Hanson said that we still have those additional asks, but they are not included into today's budget packet because we were only asked to submit a status quo budget. We will use those when we are asked.

Mary Gail Scott said that she was expecting some more information on the additional ask projects.

Linda Hanson said that we can send the additional asks to you by e-mail.

Susan Heathcote asked about the \$50,000 for the livestock database. When will that be operational? I think it needs to be a priority.

Linda Hanson said we need additional resources to complete that database.

Charlotte Hubbell asked how the EPC's annual report to the legislature from last year matches up with the budget requests for this year. Some of the items included: increasing enforcement (maybe hiring 7-10 more field staff) and work on the state water plan.

Wayne Gieselman said that we received \$360,000 last year for more animal feeding operation activities, which is included in this budget. The water plan (water quantity) received \$480,000, which is also reflected in this budget.

Linda Hanson said that the legislature did respond to some of your concerns. These items are new for 2008.

Charlotte Hubbell said that she is not satisfied with the amount of increase to these funds considering the department has a \$20 M dollar budget.

Darrell Hanson said that it is a good increase, the legislature noticed the report and that's the first step. In an agency as big as the DNR, there are many other factors that set priorities. I think it would be difficult to re-arrange programs to find extra funding for more enforcement or water quality issues.

Linda Hanson said that there are always room for improvement. This Commission can make suggestions and recommendations to the Governor.

Charlotte Hubbell asked Ed Tormey, Attorney for the DNR if there has been an increase in enforcement.

Ed Tormey said that since he started with the department three years ago, they have hired three new attorneys to help with enforcement.

Darrell Hanson said that he has seen a difference about two years after he joined the commission. The turn around time on referrals has decreased from 6-8 years ago down to just a few months.

Motion was made by David Petty to approve the budget as presented. Seconded by Paul Johnson. Motion carried unanimously.

APPROVED AS PRESENTED

REFERRAL TO THE ATTORNEY GENERAL – CRESTON BEAN PROCESSING, LLC

Anne Preziosi, DNR attorney presented the following information:

Creston Bean Processing is located in Creston Iowa. The facility is subject to the provisions of the “*National Emissions Standards for Hazardous Air Pollutants: Solvent Extraction for Vegetable Oil Production*,” found at 40 Code of Federal Regulation Part 63, Subpart GGGG. Subpart GGGG was adopted by reference by DNR at 567 Iowa Administrative Code 23.1(4) “cg” and has been incorporated into the requirements of Creston Bean’s Title V operating permit. *The facility has violated the requirements of Subpart GGGG.*

The Creston Bean facility is a major stationary source for purposed of the Title V operation permit program. According to the findings made during a United States Environmental Protection Agency (EPA) inspection conducted during January 2007, the Creston Bean facility has violated the monitoring and recordkeeping requirements of its Title V operating permit. The facility also has violated the provisions of Subpart GGGG and Air Quality Construction Permit No. 97-A-956-S1, both of which were adopted by reference into its Title V permit.

The Creston Bean facility has potential to emit Volatile Organic Compounds that would classify it as a major stationary source for purposed of the Prevention of Significant Deterioration (PSD) of Air Quality construction permitting program. However, the Creston Bean facility is a systemic minor source for purposes of the PSD construction permitting program. This means that the facility has required and received federally enforceable emissions limits in construction permits and compliance with those emission limits allows the facility to be classified as a synthetic minor facility for purposed of the PSD program. The facility has violated emission limits in on of it synthetic minor construction permits.

According to information given to DNR prior to the date of the litigation report was written, Creston Bean's 12 month compliance ratio has been greater than 1.00 since January 2007. Creston Bean submitted additional data last week, indicating that some of the hexane percentages previously reported were incorrect. DNR recalculated the 12 month compliance rations based on the new data, which still indicates non-compliance.

During the February 6th, 2006 inspection Creston Bean found that the facility personnel failed to close a valve prior to resuming normal operating conditions after a September 2006 routine ten-day shutdown of the facility. The facility did resume normal operations after the shutdown. However, a three-inch valve on the vent heads of the hexane storage tank was opening during shutdown and was not closed until February 2007. At the time of this discovery, the Creston Bean personnel believed that shutting the valve would current the solvent loss problem.

On February 28, 2007, Creston Bean submitted a deviation notification report to DNR indicating the facility had exceeded the compliance ration.

On July 16, 2007, the notification report submitted by Creston Bean indicated a compliance ratio of 1.39. As I previously stated, we do not have the most updated data.

On August 8, 2007, Creston Bean submitted a letter discussing possible reasons other than the valve being open. Since the litigation report was written, we have meet with Creston Bean. At that time we received the hexane mis-information and that they discovered a portion of the system was black with excess slate. They apparently had several recent consultants and one suggested that as a possible problem.

The current owners have been operating this plant since 2004. When they first started operating this plant, they started to roll out of compliance with this subpart. For a period time, they were back into compliance, but since January 2007 they have been out.

The last thing is that they failed to keep up with the Title V operating permit and the recordkeeping requirements.

On January 24-25, 2007 a United State Environmental Protection Agency inspector conducted an announced air quality inspection of the facility and found that recordkeeping and monitoring requirements were not being kept.

We ask you to refer Creston Bean to the Attorney General's office.

Dave Tripp, Counsel from Creston Bean
Steve Tomlinson, Plant superintendent at Creston Bean
Marvin Hochmister, Vice President and Regional Manager

Dave Tripp said that this commission has gotten our attention and we want to share with you on how we plan to fix it.

Marvin Hochmister said that this plant was built in 1998 by CL Processing. This facility went bankrupt in 2004, they were not able to reorganize. Creston Bean purchased the facility in 2004. Creston Bean is the smallest hexane bean processing in the state. It was made to be used for the purpose of special soybean crushing. It operates 24/7 and employees 24 individuals from Creston. Our specialties are human consumption items.

Steve Tomlinson said that in January when we went out of compliance, that was not our first clue. We had a shut down in December of 2006 and when we came back up we notice the first full month that we had a problem. We did contact a couple of different consultants to come in February 2007. He was there for several days and didn't find anything of substance. We did find the valve and that made some difference but wasn't the total problem. We thought we had a moisture problem as well. We did have a water company come out and talk to us about water quality. We are a specialty plant so we do clean out the equipment very regularly.

Marvin Hochmister said that back in February/ March we lost our compliance person for the plant. At that time, we hired Trinity out of Des Moines. We shut this plant down from March 2006 to October 2006. That plant had not been maintenance. We weren't satisfied at what we were seeing. For 25 days, Bill Smith couldn't identify a problem. A couple of weeks ago, we hired John Castinie, with over 40 years experience. He was the designer and engineer of this plant. We found that the main vent tube coming out of DTDC was over 70% blocked. This had accumulated over some years. There was nothing to alert us that we had a blockage up there. We recently did a pressure check on the DTDC and there was a pressure, when in fact there should be a vacuum. In addition to that, one of the main contributors to the hexane loss, there is a main rotary air lock that goes into the DTDC, that lock should be around 7-9,000 on rotary pins and it was around 300,000. That is an enormous amount of air going to the DTDC which is causing the pressure issue. I talked to Crown who manufactures this and they are about six weeks out. This is in the process of being ordered. IN addition, I have retained John again to come back to the plant for at least one week to turn this plant upside down.

Dave Tripp thanked the DNR for being responsive. We promptly contacted them upon receiving notice to refer this matter to the AG's office. We are working as hard and as fast as we can and not with holding resources to solve this matter. We believe we can solve this matter without going to court. We will continue to work cooperatively with IDNR.

Mary Gail Scott asked what there current usages of hexane are?

Dave Tripp said that hexane usage has declined. We had engineers working on the problem when we noticed the high numbers, but finding the problem was hard to identify. We thought we found the problem with the open valve but that wasn't it since the numbers continued to rise.

Motion was made by Mary Gail Scott to refer Creston Bean Processing to the Attorney General. Seconded by Susan Heathcote. Motion carried unanimously.

Mary Gail Scott commended the company for taking the right steps, it just shouldn't take a year to finally be reaching a possible problem. The problem of blockage should be an easy find and easy fix.

REFERRED

REFERRAL TO THE ATTORNEY GENERAL – MASTER METALS LLC/KEOKUK STEEL CASTINGS

Kelli Book, DNR Attorney presented the following information in a handout that was distributed to the Commissioners relating to their major violations.

Over the past year and half, there have been numerous air quality violations at the Keokuk Steel Castings plant that include, failed stack tests, inadequate record keeping and missed deadlines.

There have been construction permits issued to Keokuk Steel Castings. The construction permits contained emission limits for fine particulate matter. (PM10) The emission limits were established based on the NASP. In July 2006, they did conduct some tests and failed to meet their emission limits. IN June 2007, all three emission points were tested again and failed again.

They also failed to test at rated capacity for their stack tests. In July 2006, they conducted some tests on EPs 9B, 12, 17, none of these tests were tested at rated capacity, so we didn't get a fair look at how they were operating. Since that time, 9B has been tested and there was stack testing violations. EP 12 and 17 have not been re-tested therefore they are out of compliance with those.

Keokuk Steel is considered a foundry and therefore needs to be in compliance with MACT emission limits, which they are not. As part of the requirements, they are required to submit to scrap metal inspections and by April 2005 the facility was compiling with the scrap metal inspection plan. By June 21, 2005, the facilities were suppose to submit a notification of

compliance with their scrap inspection plan, they failed to do so. The facilities were also suppose to submit semi-annual compliance reports, since they have started Keokuk has failed to submit four of these plans. In June 2007, facilities were suppose to submit a second notification of compliance and again they did not submit this. The stack testing that took place in June 2007 showed that Keokuk failed to demonstrate compliance with the PM limit.

In regards to their Title V operating permits:

Failure to meet periodic monitoring requirements – Keokuk Steel was required to keep twelve month rolling totals for several of the emission points and they were not doing this.

Late submittals – failure to timely submit Title V fees and the Title V Annual Certifications. Since March 31, 2006 they have submitted the reports but they were required annually since the start of their business.

Keokuk Steel Castings has been in this position before. They were previously issued two Administrative Orders and in January 2002 they were before the EPC for referral to the Attorney General for similar types of violations. The Attorney General's office and Keokuk went into a consent decree. Given the numerous current violation some of which are still ongoing and the facilities past history, the department believes that referral to the Attorney General is the most appropriate enforcement.

Pat Tucker, Manufacturing Manager of Keokuk Steel Castings has been in business over 70 years. A foundry is a heavy metal industry. We employee 450 people. 80-90% of the metals we make are from recycled materials. 100% of our sand is recyclable. In the past, we were not a good neighbor to the people around us in Keokuk, we had smoke coming out of our smoke stacks and dust on the ground. This was going on the last time we were here, since that time we have worked very diligently to correct those problems. They were huge ecological hazardous. Now, we are here for recordkeeping violations and not running at capacity. Some of the things were we are out of compliance are for very small emission standards. We hired an environmental coordinator two years ago and we put our faith in that person to keep us in compliance. We found out two months ago, that the person was not doing there job, so we let them go. We switched to a management team to help prevent this from happening again. It's know a team of individuals to keep track of issues. We first become aware that we were having problems when we did stack testing in June and failed. We did some background research and out that we had failed it before. We have had ongoing communications with DNR to help us get in track. I'm asking you to keep this within the DNR. It would be the most appropriate.

Gene Taylor, Trinity Consultants addressed the failed stack tests. In today's current regulatory scheme those emission points wouldn't even require a construction permit. The company is dealing with emission limits that aren't even justified. In terms of the MACT issue and not doing anything and the other recordkeeping issues, that unfortunately were the duties of the environmental manager and they failed to do their job. The current management team was unaware that recordkeeping was not being done. It doesn't make it right but that's the reality. We did hire a consultant to come in to do the test stacking. He shows up and does a test, but he does not know the rated capacity for the test until well after that day is over. Because of the extenuating circumstances, we believe this should be kept within the department.

Mary Gail Scott said that environment and health and safety issues need to be an equal part of running a business, just like keeping track of your business economics.

Pat Tucker said that we had a guy hired to do this sort of thing. If we asked how things were he reported that everything was fine outside of a few issues, but I didn't know all of the intricate things about his job to ask he if completed all the forms. I wish we could have known about these problems sooner but that didn't happen until June.

Mary Gail Scott said that the violations before us probably warrant a referral because the violations are over \$10,000.

Motion was made by Mary Gail Scott to refer Keokuk Steel Castings to the Attorney General. Seconded by Sue Morrow. Motion carried unanimously. Motion carried unanimously.

REFERRED

NOTICE OF INTENDED ACTION - ADOPTION OF RECREATIONAL USE ASSESSMENT AND ATTAINABILITY ANALYSIS PROTOCOL BY REFERENCE. 567-61.3(8)

Jon Tack, DNR Attorney presented the following information.

The Commission is asked to approve the Notice of Intended Action to adopt a new administrative rule 567-61.3(8) which adopts the Department's Recreational Use Assessment and Attainability Analysis Protocol by reference.

Pursuant to Iowa Code section 455B.176A(6), the Commission is required to adopt rules that establish procedures and criteria to be used in the development of a use attainability analysis. The Commission has previously adopted the "Cold Water Use Designation Assessment Protocol" by reference at sub rule 61.3(6) and the "Warm Water Stream Use Assessment and Attainability Analysis Protocol" by reference at subrule 61.3(7). Any future amendments to the reference document will proceed through formal rule making and will reflect the date of the revised documentation. Proposed subrule 61.3(8) will fulfill the Commission's requirements pursuant to section 455B.176A(6).

Purpose

This Recreational Use Assessment and Attainability Analysis protocol is intended to assist any party interested in conducting investigations to provide scientifically defensible field information on the existing and attainable recreational uses of waters of the State. This protocol will be an important tool in recommending and justifying those waters to be designated (or re-designated) for one of the three Class A recreational uses. Designated waters are an important subset of the waters of the State as they are afforded specific protections under regulatory provisions and are subject to numeric criteria to protect the designated use. The information obtained using guidance presented in this document will be used to:

Comply with federal requirements for the designation of recreational uses,
Assist in identifying waters of the State which support recreational uses,
Assist in identifying waters of the State which do not support contact recreational uses,
Respond to the changes in ability of surface waters to support recreational uses, and/or

Review and modify, as appropriate, the recreational designation of surface waters.

A significant number of stream reaches or water bodies are currently warranting Use Attainability Analysis (UAA) efforts because UAA documentation is now necessary for any water body for which Iowa proposes a Class A2 or Class A3 use designation. Thus, this protocol will serve to provide the methodology to obtain field data to assist in justifying a position on the recreational uses of a water body even if the designation is other than Class A1 primary contact recreation.

Any interested person may collect field data in support of preparing a formal Use Assessment and Attainability Analysis (UAA) report on a waterbody or waterbody segment and submit the resulting data report to the Department of Natural Resources (the department). The department will use the resulting data report as supporting documentation (including preparation of a formal UAA report) in the development of applicable rules reflecting the use designation within the Surface Water Classifications.

The department encourages anyone wishing to perform a field collection for UAA purposes to meet with department staff prior to initiating the work. These pre-meetings may help ensure a confident understanding of this protocol.

Background

Federal Clean Water Act and Code of Federal Regulations

Use designations for waters under the Clean Water Act come from the Act's declaration of goals, commonly referred to as the "fishable/swimmable" goal.

Clean Water Act section 101(a)(2):

It is the national goal that wherever attainable, an interim goal of water quality which provides for the protection and propagation of fish, shellfish and wildlife and provides for recreation in and on the water be achieved by July 1, 1983.

The Clean Water Act contains details regarding the State's role in designating uses for water bodies, including suggestions for categories of use classifications.

Clean Water Act section 303(c)(2)(A):

Whenever the State revises or adopts a new standard, such revised or new standards shall be submitted to the Administrator. Such revised or new water quality standard shall consist of the designated uses of the navigable waters involved and the water quality criteria for such waters based upon such uses. Such standards shall be such as to protect the public health or welfare, enhance the quality of water and serve the purposes of this Act. Such standards shall be established taking into consideration their use and value for public water supplies, propagation of fish and wildlife, recreational purposes, and agricultural, industrial, and other purposes, and also taking into consideration their use and value for navigation.

The definition of waters of the United States can be found below.

40 CFR 122.2:

Waters of the United States or waters of the U.S. means:

(a) All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;

(b) All interstate waters, including interstate "wetlands;"

(c) All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, "wetlands," sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters:

(1) Which are or could be used by interstate or foreign travelers for recreational or other purposes;

- (2) *From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or*
- (3) *Which are used or could be used for industrial purposes by industries in interstate commerce;*
- (d) *All impoundments of waters otherwise defined as waters of the United States under this definition;*
- (e) *Tributaries of waters identified in paragraphs (a) through (d) of this definition;*
- (f) *The territorial sea; and*
- (g) *"Wetlands" adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs (a) through (f) of this definition.*

Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of CWA (other than cooling ponds as defined in 40 CFR 423.11(m) which also meet the criteria of this definition) are not waters of the United States. This exclusion applies only to manmade bodies of water which neither were originally created in waters of the United States (such as disposal area in wetlands) nor resulted from the impoundment of waters of the United States. [See Note 1 of this section.] Waters of the United States do not include prior converted cropland. Notwithstanding the determination of an area's status as prior converted cropland by any other federal agency, for the purposes of the Clean Water Act, the final authority regarding Clean Water Act jurisdiction remains with EPA.

Federal definition of a Use Attainability Analysis can be found below.
40 CFR 131.3(g):

Use attainability analysis is a structured scientific assessment of the factors affecting the attainment of the use which may include physical, chemical, biological and economic factors as described in § 131.10(g).

Federal regulations contain details regarding the State's role in designating uses for water bodies, including suggestions for categories of use classifications, which were derived from section 303(c)(2)(A) of the Clean Water Act.

40 CFR 131.10(a):

Each State must specify appropriate water uses to be achieved and protected. The classification of the waters of the State must take into consideration the use and value of the water for public water supplies, protection and propagation of fish, shellfish and wildlife, recreation in and on the water, agricultural, industrial, and other purposes including navigation. In no case shall a State adopt waste transport or waste assimilation as a designated use for any waters of the United States.

Provisions within the federal regulations preclude the removal of existing or attainable uses. Existing uses are those attained in the water body on or after November 28, 1975, regardless of listing in the State Clean Water Law.

40 CFR 131.10(g):

States may remove a designated use which is not an existing use, as defined in § 131.3, or establish sub-categories of a use if the State can demonstrate that attaining the designated use is not feasible because:

*Naturally occurring pollutant concentrations prevent the attainment of the use, or
Natural, ephemeral, intermittent, or low flow conditions or water levels prevent the attainment of the use, unless these conditions may be compensated for by the discharge of sufficient volume of effluent discharges without violating State water conservation requirements to enable uses to be met, or Human caused conditions or sources of pollution prevent the attainment of the use and cannot be remedied or would cause more environmental damage to correct than to leave in place, or Dams, diversions, or other types of hydrologic modifications preclude the attainment of the use, and it is not feasible to restore the water body to its original condition or to operate such modifications in a way that would result in the attainment of the use, or.
Physical conditions related to the natural features of the water body, such as lack of proper substrate, cover, flow, depth, pools, riffles, and the like, unrelated to water quality, preclude*

attainment of aquatic life protection uses,² or Controls more stringent than those required by sections 301(b) and 306 of the Act would result in substantial and widespread economic and social impact.

Federal regulation establishes when designated uses may not be removed.

40 CFR 131.10(h):

States may not remove designated uses if:

They are existing uses, as defined in § 131.3, unless a use requiring more stringent criteria is added; or

Such uses will be attained by implementing effluent limits required under sections 301(b) and 306 of the Act and by implementing cost-effective and reasonable best management practices for nonpoint source control.

Provisions within federal regulations also require that States upgrade the designated uses of the water body to what is actually being attained.

40 CFR 131.10(i):

Where existing water quality standards specify designated uses less than those which are presently being attained, the State shall revise its standards to reflect the uses actually being attained.

Federal regulations require the State to conduct a Use Attainability Analysis in order to justify deviation from the use designations set forth in the Clean Water Act's "fishable/swimmable" goal.

40 CFR 131.10(j).

A State must conduct a use attainability analysis as described in 131.3(g) whenever:

(1) The State designates or has designated uses that do not include the uses specified in section 101(a)(2) of the Act, or

(2) The State wishes to remove a designated use that is specified in section 101(a)(2) of the Act or to adopt subcategories of uses specified in 101(a)(2) of the Act which require less stringent criteria.

Iowa's Clean Water Law and State Regulations

The Iowa Code (445B) and the water quality standards (Iowa Administrative Code, 567, Chapter 61) establish water quality goals and requirements for all waters of the State. Waters of the State are defined in the Iowa Code (455B.171 (36) as: any stream, lake, pond, marsh, watercourse, waterway, well, spring, reservoir, aquifer, irrigation system, drainage system, and any other body or accumulation of water, surface or underground, natural or artificial, public or private, which are contained within, flow through or border upon the state or any portion thereof.

Iowa Administrative Code (IAC), Part 567, Chapters 60, and 61 note applicable definitions and provisions regarding Iowa's Water Quality Standards (WQS). The WQS establish specific use designations for waterbodies that support or are capable of supporting primary and secondary contact recreation and children's recreational activities, referred to as the group of Class A waters. Waters designated as Primary contact recreational use (Class A1) are;

'Waters in which recreational or other uses may result in prolonged and direct contact with the water, involving considerable risk of ingesting water in quantities sufficient to pose a health hazard. Such activities would include, but not limited to, swimming, diving, water skiing, and water contact recreational canoeing.' [567-61.3(1)b(1)]

Waters designated as Secondary contact recreational use (Class A2) are;

'Waters in which recreational or other uses may result in contact with the water that is either incidental or accidental. During the recreational use, the probability of ingesting appreciable quantities of water is minimal. Class A2 uses include fishing, commercial and recreational boating, any limited contact

² Physical features, as described in 40 CFR 131.10(g)5., must be associated with one or more of the other removal criteria [40 CFR 131.10(g)1.-4. & 6.] in order to remove a recreational use.

incidental to shoreline activities and activities in which users do not swim or float in the waterbody while on a boating activity.’ [567-61.3(1)b(2)]

Waters designated as Children’s recreational use (Class A3) are;
‘Waters in which recreational uses by children are common. Class A3 waters are water bodies having defined banks and bed with visible evidence of the flow or occurrence of water. This type of use would primarily occur in urban or residential areas.’ [567-61.3(1)b(3)]

In addition, 567-60.2 further defines Primary contact as

‘...any recreational or other water use in which there is direct human contact with the water involving considerable risk of ingestion of water or contact with sensitive body organs such as the eyes, ears, and nose, in quantities sufficient to pose a significant health hazard.’

Secondary contact is defined in Department rules (567-60.2) as

‘...any recreational or other water use in which contact with the water is either incidental or accidental and in which the probability of ingesting appreciable quantities of water is minimal, such as fishing, commercial and recreational boating and any limited contact incidental to shoreline activities. This would include users who do not swim or float in the water body while on a boating activity.’

Specific numerical criteria and narrative stipulations associated with the Class A designated uses are set forth in the WQS’. [567-61.3(3)] In summary, these provisions establish *Escherichia coli* (E. coli) bacteria levels and applicable calendar months (Table 1) when the levels shall not be exceeded. There is also the phrase that the levels shall not be exceeded when the uses can reasonable be expected to occur.

Use	Geometric Mean	Sample Maximum
Class A1		
3/15-11/15	126	235
11/16 – 3/14	Does not apply	Does not apply
Class A2 (Only)		
3/15-11/15	630	2880
11/16 – 3/14	Does not apply	Does not apply
Class A2 and B(CW) or HQ		
Year-Round	630	2880
Class A3		
3/15-11/15	126	235
11/16 – 3/14	Does not apply	Does not apply

Establishing a non-Class A1 Use or Removal of a Use

As noted above, federal regulations require the State to conduct a Use Attainability Analysis (UAA) in order to justify deviation from the use designations set forth in the Clean Water Act’s “fishable/swimmable” goal. 40 CFR 131.10(j).

A State must conduct a use attainability analysis as described in 131.3(g) whenever:

(1) The State designates or has designated uses that do not include the uses specified in section 101(a)(2) of the Act, or

(2) *The State wishes to remove a designated use that is specified in section 101(a)(2) of the Act or to adopt subcategories of uses specified in 101(a)(2) of the Act which require less stringent criteria.*

Existing Uses versus Designated Uses

Water uses are categorized as either “existing” or “designated,” or as both.

“Existing uses” are defined in 40 CFR 131.3(e) “...as those uses actually attained in the water body on or after November 28, 1975, whether or not they are included in the water quality standards.”

“Designated uses” are defined in 40 CFR 131.3(f) as “...those uses specified in water quality standards for each water body segment whether or not they are attained.”

Water body segments that have a designated use may have that use removed or established at a lower recreational use designation (Class A2 or A3), if it can be shown that the use cannot be attained due to one or more of the factors described in Title 40 of the Code of Federal Regulations Section 131.10(g)1-6.

A submitter of field information may provide evidence demonstrating that the Class A1 use is neither existing nor attainable. Evidence of an existing use that occurred after November 28, 1975, but is no longer observed at the time of the UAA, must remain designated for that use unless substituted for another use that has water quality criteria as stringent or more stringent than the original use.

Field Assessment Procedures for Recreational Use Assessments and UAAs

Recreational Season – Field Surveys for Use Assessments and UAAs aimed at assessing recreational use should be performed during the recreational season defined by rule as between March 15 and November 15 for all non-cold water bodies. However, Use Assessments and UAAs may be performed at any time of the year if sufficient evidence exists to confidently determine the existing and/or the attainment of a use.

Base Flow Conditions – Use Assessments and UAAs field surveys are only “snapshots” of observations when conducted in accordance with this protocol. To acquire the best results from a single field survey, the survey for Use Assessments and UAAs should be conducted during base flow periods. Base flow is that portion of a stream’s flow contributed by sources of water other than precipitation runoff. This refers to a fair weather flow sustained primarily by springs or groundwater seepage, wastewater discharges, irrigation return flows, releases from reservoirs, or some combination of these.

Points of Observation –Typically, field activities should include a visual inspection of the targeted water body at a minimum of three (3) road crossings and other publicly accessible locations. If stream segments are short or remote and do not provide three road crossings, then clarification shall be provided. If information is given regarding locations of other possible recreation sites within less accessible stretches within the Use Assessment and UAA segment³, then those sites shall also be included in the survey if possible. For stream segments receiving a domestic discharge, a minimum of three (3) stream sites near the discharge point should be selected for assessment, if possible.

At each of the stream sites, an upstream and downstream sample location will be established to collect the noted physical and hydrological data noted in Data Sheet B. The two sample locations should be selected to be representative of the overall assessment length. Normally the sample locations should be 40 feet to 150 feet from the center point of the stream site which is typically a bridge or access point. Where possible, the maximum stream depth between the two sample locations should be collected and the approximate spatial size determined (width and length) of the stream containing the maximum depth.

³ UA/UAA segment is the stream segment targeted for a UA/UAA and is not required to be the full length described as a separate segment in Surface Water Classification. If less than the full length represented by a WBID, the start and end points of the shorter segment must be clearly identified on the survey forms. Partial assessments of lakes are not allowed.

For lake assessments, one site may be sufficient to characterize existing or potential uses if the entire lake can be adequately observed from one location.

The Department staff may recommend primary field survey sample sites for waterbodies to be assessed. These primary sites may be moved to the nearest road crossing (upstream or downstream) if the site visit indicates that it is an inappropriate sample site for valid reasons. Field notes should indicate the reasons for rejecting the primary site and selecting the alternative site.

When evaluating water bodies on private land, surveyors should attempt to secure the landowner's permission to access the sites.

Mapping - All field-surveyed sites shall be clearly marked on the maps provided by the department. When possible, it is suggested that Global Positioning System (GPS) coordinates of each site be taken on-site in the Universal Transverse Mercator (UTM), North American Datum 1983 (NAD 83), Zone 15 format (easting and northing) and recorded in the field notes. If GPS is used, the department also recommends that the coordinates be recorded on the department's Locational Data Sheet to ensure accurate documentation of details. The Locational Data Sheet can be obtained from the department upon request.

When a portion of a water body segment (as listed in the Surface Water Classification of the Water Quality Standards) is targeted for a Use Assessment and/or UAA field survey, the surveyor must clearly identify the start and end points (upstream and downstream coordinates) of the portion on Data Sheet A. The water body segments assessed should match the segments listed in the Surface Water Classification. Partial assessment of lakes is not allowed.

Use of Forms - Narrative site assessments are to be clearly recorded on the forms provided in this protocol. To eliminate the risk of confusion between multiple sites, each site must be recorded on a separate form.

Photographic Record - A photographic record must be made of each site during the site assessment. Photographs should include at least an upstream view, downstream view and any evidence of observed or potential uses. Photographs must be catalogued in the field notes in a manner that indicates the site location, date, view orientation and what is being shown.

Interviews - Users present during the survey, waterside landowners and local residents, including school-aged children, should be interviewed regarding the history of uses in or along the water body in question. Interviews are to be clearly recorded in the field notes. Persons interviewed should attempt to be identified by legal name and address in the field notes and written report.

If there is a nearby residence and no one is available for an interview. Postage-paid interview postcards can be distributed at these locations.

Data Relevant to the Recommendation of Removal of a Designated Use

The following italicized paragraphs set forth the criteria established by the U.S. Environmental Protection Agency and section 455B.176A of the Code of Iowa for establishing a non-Class A1 Use or removal of a designated use.

The paragraphs that follow the italicized portions provide additional guidance for data which may be relevant to the application considering the federal criteria for Iowa's waters.

Natural Pollutant Sources

40 CFR 131.10(g): *States may remove a designated use which is not an existing use, as defined in section 131.3 or establish subcategories of a use if the State can demonstrate that attaining the designated use is not feasible because:*

1. *Naturally occurring pollutant concentrations prevent the attainment of the use.*

Field documentation could include, but is not limited to, watershed characterization, bacterial source tracking, antibiotic resistance analysis, historical accounts, and/or interviews. When watersheds contain both natural and anthropogenic sources of bacteria, the field data should attempt to separately quantify the bacterial contributions from natural sources to assist in scientifically determining if that the natural contribution alone is the cause for the water quality to exceed the bacterial standard.

Natural, Ephemeral, Intermittent or Low-Flow Conditions

40 CFR 131.10(g): States may remove a designated use which is not an existing use, as defined in section 131.3, or establish subcategories of a use if the State can demonstrate that attaining the designated use is not feasible because:

2. Natural, ephemeral, intermittent, or low flow conditions or water levels prevent the attainment of the use, unless these conditions may be compensated for by the discharge of sufficient volume of effluent discharges without violating State water conservation requirements to enable uses to be met.

The field data submitter may show that naturally caused ephemeral⁴, intermittent⁵ or low-flow conditions exist in the waterbody and may prevent the attainment of recreational uses. Stream studies should be conducted during the recreational season (March 15 to November 15) unless sufficient evidence can be provided outside this season.

⁴*Ephemeral stream* is a stream that flows only in direct response to precipitation in the immediate watershed or in response to the melting of a cover of snow and ice, and which has a channel bottom that is always above the local water table [30 CFR 701.5].

⁵ *Intermittent stream* is defined as a stream that flows only part of the time. Flow generally occurs for several weeks or months in response to seasonal precipitation, due to groundwater discharge, in contrast to an ephemeral stream, which flows but a few hours or days following a single storm.

Intermittent stream means—A stream or reach of a stream that is below the local water table for at least some part of the year, and obtains its flow from both surface runoff and ground water discharge [30 CFR 701.5].

Isolated pools are occasionally found in rivers and streams. These isolated pools should be evaluated on a case-by-case basis. Factors considered to determine the applicability of this factor for a specific pool may include, but are not limited to:

- the overall size of the pool,
- the prevalence of the depth throughout the pool,
- hazards contained within the pool (e.g. as logjams, riprap, rebar, swift current, or other hazardous conditions),
- hazards surrounding the pool (e.g. steep banks, riprap, electric or barbed wire fencing, active pasture, industrial area, or other hazardous conditions),
- accessibility (e.g. fenced, private property, active cattle pasture, federal land, etc.)
- evidence of existing use (e.g. landowner interview information revealing if it has ever been used for swimming),
- permanence of the pool (i.e. is the pool temporary such as a beaver dam or log jam pool that may only last until the next large rain event)

Non-Remedial, Human Caused Conditions

40 CFR 131.10(g): *States may remove a designated use which is not an existing use, as defined in section 131.3, or establish subcategories of a use if the State can demonstrate that attaining the designated use is not feasible because:*

3. Human caused conditions or sources of pollution prevent the attainment of the use and cannot be remedied or would cause more environmental damage to correct than to leave in place.

Hydrologic Modifications

40 CFR 131.10(g): *States may remove a designated use which is not an existing use, as defined in section 131.3, or establish subcategories of a use if the State can demonstrate that attaining the designated use is not feasible because:*

4. Dams, diversions, or other types of hydrologic modifications preclude the attainment of the use, and it is not feasible to restore the water body to its original condition or to operate such modifications in a way that would result in the attainment of the use.

Natural Physical Features

40 CFR 131.10(g): *States may remove a designated use which is not an existing use, as defined in section 131.3, or establish subcategories of a use if the State can demonstrate that attaining the designated use is not feasible because:*

5. Physical conditions related to the natural features of the water body, such as lack of proper substrate, cover, flow, depth, pools, riffles, and the like unrelated to water quality, preclude attainment of aquatic life protection uses.

Substantial Widespread Social & Economic Impact

40 CFR 131.10(g): *States may remove a designated use which is not an existing use, as defined in section 131.3 or establish subcategories of a use if the State can demonstrate that attaining the designated use is not feasible because:*

6. Controls more stringent than those required by sections 301(b) and 306 of the Act would result in substantial and widespread economic and social impact.

This criterion may be applicable when the construction of pollution control measures required to attain the bacteria standards for water-contact recreation would result in widespread and substantial adverse social or economic

impacts. Potential sources for information on substantial widespread social and economic impacts, which provide criteria for decision making, include:

- USEPA's *Interim Economic Guidance for Water Quality Standards Workbook* (EPA 823-B-95-002, <http://www.epa.gov/waterscience/standards/econworkbook/>) or
- USEPA's *Combined Sewer Overflows—Guidance for Financial Capability Assessment and Schedule Development* (EPA 832-B-97-004, <http://www.epa.gov/npdes/pubs/csofc.pdf>).

Jon Tack said that we are trying to move forward to get this adopted within the rule and then onto the UAAs and the determinations made.

Richard Leopold said that we probably should have done this earlier as far as the rulemaking process but we are where we are. We need these rules as soon as possible. There were some valid points made today from commenter's but I think we can accommodate that during the rulemaking process.

Mary Gail Scott said that the protocols are one of the pieces of information that you use in the Use Attainability Analysis. Is it foreseen in the federal or state programs that NGO's or other interested parties could replicate the thought processes of the DNR to come up with a similar conclusion? And if so, then are those thought processes memorialized somewhere where people can access those to figure out how the determinations were made by the state?

Jon Tack said that they are not. It takes a gathering of the data and the possible issues for downgrade. They were first in the federal rules and then copied into our code and are now in the protocol. We look at the definitions of what is primary, secondary and child's play contact and you apply the same standards of evidence.

Susan Heathcote asked when this draft was available to the public?

Jon Tack said that the earliest effective date would be February 8, 2008.

Susan Heathcote said that there are a lot of communities waiting to receive the designations so they can plan accordingly. How big of a difference is the designation between A1 and A2 to a wastewater facility?

Chuck Corell said that we have had a facility tell us that if they had an A2 designation they could avoid disinfection. Quick frankly, all of my engineers can't see how that could happen. When you design a disinfection system, you design it for zero and hope to stay under the limit.

Susan Heathcote said that it would be nice to see this clear cut. There is a lot of issues within the water quality standards themselves, the language is somewhat suggestive. Examples would be: water contact, recreational uses. What is that? To one person it could mean one thing and to another person something totally different. We need to have some common understanding on some of these terms that are in the water quality standards. Prolonged contact with the water –

what does that mean? I'm not coming to the same conclusions as the UAA's, so I would like to know what would be a common mean.

Jon Tack said that some of those factors are in the protocol.

Chuck Corell said that anyone near a stream can submit information about that stream.

Susan Heathcote said that she was concerned with the UAA for the Fox River Wildlife area. This stream has several bridge crossings and trails nearby and there was no documentation of this in the UAA. I'm concerned that there is no mention of the public use areas in the UAAs. We as a commission need to have information in these UAAs without having to go and seek out what sort of uses are going on there. We need all of the important information in the UAAs otherwise this makes for a difficult task.

Chuck Corell said that everything we use to determine if a stream should be downgraded is on the DNR's website.

Susan Heathcote asked the DNR if they could make an effort to contact the people that would use the parks and public use areas that are located along the streams and rivers.

Chuck Corell said that we could try that but we would have to go back on the UAAs done and try to contact the people if they weren't already to see if a change in the designation is necessary. Overall it may not make that big of a difference.

Susan Heathcote said that the county conservation boards across the state could easily be notified to let them know that these are the streams being downgraded in your county. If they find a stream that needs a higher protection they could send in their comments.

Recreational canoeing is classified as an A1 type stream but looking at the UAAs it doesn't seem to be an A1 designation.

Chuck Corell said that recreational canoeing is an example. We still look for other evidence. Attainable use does not mean that the particular stream is safe from bacteria, it means that we believe that certain designation could be attainable.

The Commission went on to discuss what attainable means and what sort of evidence needs to be found for a certain designation.

Paul Johnson asked how we are in comparison to other states?

Chuck Corell said that Missouri only looks at water depth when determining its UAAs.

John from EPA said that EPA does not require a protocol, its state law that requires it. EPA will look at the recommendations when changing its use.

Motion was made by David Petty to approve the NOIA as presented. Seconded by Charlotte Hubbell. Motion carried unanimously.

APPROVED AS PRESENTED

SIouxLAND ENERGY & LIVESTOCK COOPERATIVE (SELc) – REFERRAL TO THE ATTORNEY GENERAL

Anne Preziosi said that SELC processes grain into ethanol and various feed products. In February 2007, three months after they began construction, SELC submitted construction permit applications for its proposed plant expansion. They explained that they were going to increase production from 25 million gallons per year to 65 million gallons per year.

In March 2007, DNR informed SELC that DNR would not authorize construction prior to the issuance of construction permits as requested. The DNR did not authorize construction based on the following reasons:

- ❖ Boilers are subject to the standards of Performance for Small industrial commercial institution steam generating units.
- ❖ Equipment leaks were subject to Standards of performance for volatile organic liquid storage vessels.
- ❖ Construction had already begun prior to approval by DNR.

On March 27, 2007 SELC reps met with DNR to discuss the plant expansion. SELC described to DNR that construction activities had taken place since November 2006. they also provided pictures showing extensive concrete work and piping that had been completed.

In April 2007, the DNR issued a Notice of Violation to SELC to initiating construction prior to obtaining the required air quality permits.

SELC began operation in November 2001, since then they have had a history of violating Iowa's air quality statutes and rules.

In 2003, SELC was issued Administrative Orders for air quality, wastewater and hazardous conditions violations. The order included a \$10,000 penalty.

We ask that you refer SELC to the Attorney General.

Jim Quilty, Attorney representing Siouxland.
Bernie Punt, General manager
Doug Oeheim,

Jim Quilty said that this is a facility that cares about business and wants to do things the right way. As problems were identified by the DNR, they were remedied and improved. The plant manager at the time of the alleged violations, was having direct communication with DNR folks

about what could and could not be done before the issuance of the permits. Something went wrong during those communications, because grading of dirt work and concrete was done prior to permits. This plant manager is no longer working for Siouxland. When this was found out, we asked the DNR what we needed to do to fix this problem. We want to do the right things.

Barb Lynch, Bureau Chief of Field Services and Compliance said that the current plant manager may have been under the wrong information but our DNR inspectors know what can and can not be done before a permit is needed. Our staff is trained on what things are allowed before a permit is needed. Concrete work is not allowed without the proper permits.

Anne Preziosi said that it's hard to believe that DNR staff could misinform the plant manager.

Jim Quilty said that his plant manager was in communication with Shawn Corbin in the central office.

Shawn Corbin said that the couple of times that he talked with the previous plant manager it was communicated that you can not go beyond dirt work.

Bernie Punt said that the NPDES permit expired in 2006 and we haven't been issued a new one because the DNR has been negotiation with EPA on the recommended changes. Nonetheless, we were issued a violation. This has been an ongoing process. We don't deny the issues that happened but how they occurred is not reflected properly. We were operating under the assumption that we had the proper permits in place according to our previous plant manager.

Darrell Hanson said that it is the Commission's job to determine if violations occurred and if so do they warrant a \$10,000 penalty or more.

Motion was made by Charlotte Hubbell to refer Siouxland Energy and Livestock Cooperative to the Attorney General. Seconded by Sue Morrow. Motion carried unanimously.

REFERRED TO THE ATTORNEY GENERAL

SOLID WASTE ALTERNATIVES PROGRAM – RECOMMENDATIONS

Tom Anderson, DNR presented the following information.

The Department received fourteen (14) proposals, requesting \$1.7 million in financial assistance, for consideration during the July 2007 round of funding. Seven projects were selected either for funding or additional consideration. If approved they will receive \$204,592 in a combination of forgivable loans and zero interest loans.

The review committee consisted of five persons representing the Energy and Waste Management Bureau (Alex Moon and Jennifer Reutzel), Iowa Society of Solid Waste Operations (Don Vogt), Iowa Recycling Association (Jeff Rose), and the Iowa Waste Exchange (Julie Plummer).

The table below summarizes recommendations by applicant and project type and by the type of award.

Recommended By Applicant Type	# Awards	Award Amount	Forgivable Loan Portion
Local Government	2	\$26,527	\$26,527
Private For Profit	2	\$24,830	\$24,830
Private Not For Profit	3	\$153,235	\$33,480
RECOMMENDED BY PROJECT TYPE	# Awards	AWARD AMOUNT	Forgivable Loan Portion
Best Practices	4	\$164,585	\$44,830
Market Development	0	\$0	\$0
Education	3	\$40,007	\$40,007
TYPE OF AWARD	# Awards	Award Amount	Forgivable Loan Portion
Forgivable loan only	6	\$84,837	\$84,837
Forgivable and 0% loan only	0	\$0	\$0
0% and 3% interest loan only	0	\$0	\$0
0% interest loan only	1	\$119,755	\$0
3% interest loan only	0	\$0	\$0

At this time, the Department is requesting Commission approval to enter into contracts with selected applicants whose awards will be in excess of \$25,000 subject to satisfactory review of additional requested information, review of business plans, negotiation of budget, match, deliverables, and other requested information.

A few changes to the item. Award monies have been decreased by \$7,500 for a total of \$197,000+ and increasing the forgivable loan amount by \$24,800.

Motion was made by Charlotte Hubbell to approve the SWAP recommendations as presented. Seconded by Ralph Klemme. Motion carried unanimously.

APPROVED AS PRESENTED

PROPOSED RULE – AMEND IAC 567 CHAPTER 213 “PACKING HEAVY METAL CONTENT”

Tom Anderson, DNR presented the following information.

This rule will give the department authority to require disposal of items that contain heavy metal material.

The rule amendments include removal from the rules of an out-of-date schedule for reducing concentration levels of Heavy Metals in packaging, and incorporate changes enacted through Senate File 344, 82nd General Assembly, first regular session (2007). These changes restricted the liability of distributors for the distribution of toxic packages without knowledge and substituted civil enforcement proceedings for the former criminal enforcement provisions.

The commission will be requested to approve this Notice of Intended Action at its October meeting.

INFORMATION

FINAL RULE – CHAPTER 28 UPDATE TO AMBIENT AIR QUALITY STANDARDS

Jim McGraw, environmental program supervisor presented the following information.

The Department is requesting that the Commission adopt an amendment to Chapter 28 "Ambient Air Quality Standards" of the 567 Iowa Administrative Code.

The purpose of the amendment is to adopt into the state air quality rules revisions to federal ambient air quality standards that EPA finalized on October 17, 2006.

As stated in the preamble of the published notice, the Department initially concluded that it was no longer necessary to conduct air dispersion modeling or set air construction permit limits for the annual PM₁₀ standard since EPA had revoked the annual PM₁₀ standard. Written comments received from EPA stated that EPA's 1997 interim PM_{2.5} implementation policy for new source review (NSR) continues to instruct that PM₁₀ should be used as a surrogate for PM_{2.5} until such time that EPA has a final implementation rule for PM_{2.5}. If the revocation of the annual PM₁₀ standard was adopted as proposed in the Notice of Intended Action, the Department would remove its only mechanism to implement EPA's interim PM_{2.5} policy for air dispersion modeling review of annual PM_{2.5} impacts. Since monitored values of the annual PM₁₀ standard will not be used to determine the PM₁₀ attainment or non-attainment status of an area, the Department has also concluded that the continued use of the annual PM₁₀ standard as a surrogate for the annual PM_{2.5} standard for NSR purposes does not conflict with Iowa statute provisions regarding adoption of state air quality rules that are more stringent than federal regulations.

To address this issue until such time as final PM_{2.5} implementation guidance is promulgated by EPA, the Department has amended the Chapter 28 language proposed in the Notice of Intended Action to add language clarifying that the annual PM₁₀ standard shall continue to be applied for purposes of implementation of new source permitting provisions in 567 IAC Chapters 22 and 33. Since the Department continues to implement EPA's 1997 interim implementation guidance for PM_{2.5}, the Department believes that this change from what was published in the Notice of Intended Action is within the scope of the published notice and is a logical outgrowth of EPA's comment on the published notice.

The Notice of Intended Action was published in the Iowa Administrative Bulletin (IAB) on January 31, 2007, as ARC 5692B. A public hearing was held on March 5, 2007. No oral or written comments were received at the public hearing. The EPA submitted the only written comment during the public comment period, which closed on March 9, 2007. A summary of the comment and the Department's response to the comment is provided in the attached public responsiveness summary. A change was made to the published notice of intended action as described in the public responsiveness summary and in the rule preamble to address EPA's comment.

These revisions address fine particulate matter, which is 2.5 micrometers in diameter and smaller (PM_{2.5}), and inhalable coarse particulate matter which is 10 micrometers and smaller in diameter (PM₁₀). EPA strengthened the 24-hour PM_{2.5} standard from the 1997 level of 65 micrograms per cubic meter of air to 35 micrograms per cubic meter of air. EPA retained the current annual PM_{2.5} standard at 15 micrograms per cubic meter of air. EPA also retained the existing 24-hour PM₁₀ standard of 150 micrograms per cubic meter of air, but revoked the annual PM₁₀ standard.

The department will be required to make PM_{2.5} attainment or nonattainment designations for the state by December 2007. EPA will review the department's designations and make its own PM_{2.5} designations by December 2009. The EPA designations will become final in April 2010.

Motion was made by Ralph Klemme to approve the final rule for Chapter 28 as presented. Seconded by Mary Gail Scott. Motion carried unanimously.

APPROVED AS PRESENTED

FINAL RULE – CH. 103.3, 104.26, 112.31, 114.31, 115.31, 118.16, 120.13, 121.8, 122.28, 122.29 AND 123.12 & TO AMEND RULES 105.14, 106.18 – FINANCIAL ASSURANCE REQUIREMENTS

Alex Moon, Energy and Waste Management bureau presented the following information.

The Commission is requested to approve the attached Final Rule to adopt new rules 103.3, 104.26, 112.31, 114.31, 115.31, 118.16, 120.13, 121.8, 122.28, 122.29 and 123.12 and to amend

rules 105.14 and 106.18. These new and amended rules are intended to fully implement the financial assurance requirements for all sanitary landfills as required by Iowa Code sections 455B.304(8) and 455B.306(8).

In 1986, the Code of Iowa was amended to require financial assurance requirements for all sanitary disposal projects. Financial assurance requirements for municipal solid waste landfills were adopted by the commission in 1994 (Chapter 111). Since 2002, financial assurance requirements have been adopted for composting facilities (Chapter 105) and transfer stations (Chapter 106). This rulemaking is intended to implement the statutorily required financial assurance requirements for the remaining categories of sanitary disposal projects. The proposed rules are based upon the existing rules for municipal solid waste landfills, composting facilities, and transfer stations.

The proposed rules apply to coal combustion residue landfills, solid waste processing facilities, solid waste composting facilities, solid waste transfer stations, biosolids monofill sanitary landfills, construction and demolition waste landfills, appliance demanufacturing facilities, persons engaged in the permitted land application of solid wastes and petroleum contaminated soils, cathode ray tube collection facilities, and household hazardous waste regional collection centers. Exceptions to the new financial assurance requirements are proposed for facilities to which the current financial assurance requirements are applicable. Financial assurance mechanisms should already be in place for such facilities.

A public hearing was held on March 28, 2007 and written comments were accepted from January 3, 2007 through March 28, 2007. Sixteen written comments and one oral comment were received during the public comment period. A summary of the comments received and the department's response to them is attached. The following changes were made in response to the comments received:

- Closure and postclosure account requirements were removed for owners and operators of industrial waste monofill sanitary landfills. A financial assurance mechanism is still required
- Additional financial assurance mechanisms were added to each rule chapter to allow greater flexibility for permit holders in meeting the financial assurance requirements
- Along with adding additional financial assurance mechanisms, each rule chapter was revised to make them more consistent with one another
- Clarification was provided with respect to the closure cost estimate requirements related to storage of solid waste in transportation vehicles and waste receptacles
- Revisions were made to chapters 567-103, 112, 114 and 115 to clarify that for existing facilities, the initial deposit into a trust fund or local government dedicated fund financial assurance mechanism shall be made within 30 days of close of the first fiscal year that begins after the effective date of this rule

Mary Gail said that you assuming that there will be no groundwater contamination because you're only looking at \$20 per appliance. How is that reconciled?

Alex Moon said that we look at this post-closure. We do require that demanufacturing happens indoors so that there is no impact to groundwater.

Motion was made by Charlotte Hubbell to approve the final rule as presented. Seconded by Ralph Klemme. Motion carried unanimously.

APPROVED AS PRESENTED

**CLEAN WATER AND DRINKING WATER STATE REVOLVING LOAN FUND – FY 2008
INTENDED USE PLANS SECOND QUARTER UPDATES**

Chuck Corell presented the following information.

Commission approval is requested for updates to the Clean Water State Revolving Fund (CWSRF) and Drinking Water State Revolving Fund (DWSRF) Intended Use Plans (IUPs) for FY 2008. The Commission approved the FY 2008 IUPs on June 5, 2007. The IUPs are amended quarterly to add projects for funding, update information about funding sources and uses, or make programmatic changes.

The second quarter 2008 CWSRF update includes an amended list of projects proposed to receive loan assistance. Thirteen new municipal wastewater projects, four new planning and design loans, and four supplemental loan requests totaling \$37.8 million are being added to the CWSRF IUP. The updated project priority list is included below.

The CWSRF IUP also includes two projects under the General Non-Point Source set-aside that require specific Commission approval for purchase of land. The Iowa Natural Heritage Foundation (INHF) proposes to borrow \$1,165,000 to purchase a 312-acre property interior to the Chichaqua Bottoms Greenbelt in Polk County. Purchase of the property and changing farming practices will help protect wetland mitigation sites and restored wetlands within the 2,800 acre greenbelt area.

INHF also proposes to borrow \$508,750 to purchase 157 acres in Buchanan County in order to protect a one-mile stretch of the Wapsipinicon River. This stretch is on the Impaired Waters List and has been designated as a Protected Waters Area.

The updated sources and uses table for the CWSRF is also included below. It shows availability and potential use of \$135 million during SFY 2008 for water quality projects and program administration.

The second quarter 2008 DWSRF update includes an amended list of projects proposed to receive loan assistance. Ten new public water supply projects and one new planning and design loan request totaling \$52.9 million are being added to the DWSRF IUP. The updated project priority list is included below.

The updated sources and use table for the DWSRF is also included below. It shows availability and potential use of \$63 million during SFY 2008 for drinking water projects. Additional

bonding is shown as a source of funds to meet loan needs. The possible use of investment funds from CWSRF, as approved earlier this summer, is not expected to be needed based on current disbursement rates. If the timing and amount of disbursements prior to the bond issue necessitate, the investment from CWSRF could be utilized until the bond proceeds are available. IFA will continue to monitor the sources and uses within the DWSRF and use the most advantageous methods to manage the cash flows and minimize costs.

A public meeting was held August 2, 2007 to receive comments on the proposed IUPs. No oral comments were provided at the hearing. The written comment period closed on August 8, 2007. A written comment was received from the Polk County Conservation Board (PCCB) in support of the Iowa Natural Heritage Foundation's proposal for land purchase in the Chichaqua Bottoms Greenbelt. PCCB noted that the property in question drains to nearly 330 acres of restored wetlands, and protecting this parcel will help protect the \$15 million investment in the greenbelt project.

Mary Gail Scott stated her concerns with the state purchasing land with the state revolving loan fund monies.

Rich Leopold said that it is important for the Natural Heritage Foundation to buy ecologically sensitive lands that are typically adjacent to natural areas. It's also good for water quality.

Mary Gail Scott said that this could be good for water quality but we don't really know that since no one is doing tests prior the land purchase and then checking up later. There is no science to back up improvement to the water quality. I just don't believe it's worth the money.

Motion was made by Charlotte Hubbell to approve the CWSRF and DWSRF as presented. Seconded by Paul Johnson. Roll call vote went as follows: Mary Gail Scott – nay; Ralph Klemme – aye; Paul Johnson – aye; Charlotte Hubbell – aye; Sue Morrow – aye; Darrell Hanson – aye. Motion carried.

APPROVED AS PRESENTED

MONTHLY REPORTS

Wayne Gieselman, Division Administrator, Environmental Protection Division, presented the following items.

The following monthly reports are enclosed with the agenda for the Commission's information.

1. Rulemaking Status Report
2. Variance Report
3. Hazardous Substance/Emergency Response Report
4. Manure Releases Report
5. Enforcement Status Report

6. Administrative Penalty Report
7. Attorney General Referrals Report
8. Contested Case Status Report
9. Waste Water By-passes Report

Aldag, Travis Ida Co. (3)	UPDATED	Animal Feeding Operation	Failure to Submit Plan	Order/Penalty	Referred Petition Filed Answer Filed Consent Decree (\$5,000 civil/ \$3,855 admin./injunction	7/18/05 11/29/05 12/01/05 3/16/07
BBR, LLC Spirit Lake (3)		Air Quality Solid Waste	Open Burning; Illegal Disposal	Order/Penalty	Referred Petition Filed Motion for Leave to Amend Order Granting Leave Amended and Substituted Petition	9/19/06 4/18/07 6/12/07 6/18/07 6/18/07
Bulk Petroleum Corporation 28 Sites (1) (6)		Underground Tank	Operation and Maintenance Violations	Referred to Attorney General	Referred Petition Filed	6/19/06 2/01/07
Cargill, Inc.; Mort's, Inc. Iowa Falls (2)		Solid Waste Wastewater	Illegal Disposal; Prohibited Discharge	Referred to Attorney General	Referred	11/14/06
Clinton, City of (6)		Wastewater	Compliance Schedule; Discharge Limits	Referred to Attorney General	Referred	9/19/05
Cohrs, Bernard; Cohrs Construction Dickinson Co. (3)		Air Quality Solid Waste	Open Burning; Illegal Disposal	Referred to Attorney General	Referred	11/14/06
Country Stores of Carroll, Ltd.; LeMars Country Store, LeMars (3)		Underground Tanks	Leak Detection; Record Keeping	Referred to Attorney General	Referred	3/06/07
Des Moines, City of; Metropolitan WW Reclamation Authority (5)		Wastewater	Compliance Schedule	Referred to Attorney General	Referred	8/15/06
De Vos, Harold and Sharon Rock Rapids (3)	UPDATED	Air Quality Solid Waste Wastewater	Open Burning; Illegal Disposal; Operation Without Permit	Order	Referred Petition Filed Motion for Partial Summary Judgment Hearing on Motion Proposed Ruling by State	9/19/06 1/23/07 6/08/07 7/09/07 8/10/07
Environmental Recycling Co., Inc. Dwight Oglesbee Masena (4)		Air Quality Solid Waste	Open Burning; Illegal Disposal	Referred to Attorney General	Referred	12/05/06

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Feinberg Metals Recycling Corp., Ft. Madison (6)	Solid Waste Wastewater	Operation Without Permit; Illegal Disposal; Stormwater – Operation Without Permit	Referred to Attorney General	Referred	3/06/07
Garrett Corporation; Delta Industries Waterloo (2)	Air Quality	Construction Without Permit; Construction Contrary to Permit	Referred to Attorney General	Referred	1/02/07
General Motor Corporation Sioux City (3)	Hazardous Condition	Remedial Action	Order	Referred	9/19/06
Golden Oval Eggs LLC Thompson (2)	Wastewater	Prohibited Discharge	Referred to Attorney General	Referred Petition Filed	12/05/06 3/29/07
Heisdorffer, Leland Keokuk Co. (6) UPDATED	Air Quality Solid Waste	DNR Defendant	Defense	Petition Filed (No original notice served) IDNR's Motion to Dismiss/Strike Hearing Date Ruling on Motion (Dismissed all damage claims against the State) Trial Ruling Affirming Agency Action	10/06/05 8/07/06 9/01/06 9/11/06 5/11/07 7/16/07
Kruse Dairy Farm, Inc. Dyersville (1)	Animal Feeding Operation	Failure to Submit Plan	Order/Penalty	Referred	12/19/05
Landfill of Des Moines #4 Des Moines (5)	Solid Waste	Operation Permit Violations – Other	Referred to Attorney General	Referred Petition Filed	4/17/06 1/23/07
Leigh, Marsha Glenwood (4)	Air Quality Solid Waste	Open Burning; Illegal Disposal	Order/Penalty	Referred Petition Filed Defendant's Motion to Dismiss State's Resistance/Motion to Dismiss Motion to Intervene Hearing on Motion to Dismiss Ruling Denying Motion to Dismiss Resistance to Motion to Intervene Hearing on Motion to Intervene Ruling Denying Motion to Intervene Hearing on Defense Motions Motion for Judgment on	9/20/04 3/29/05 4/20/05 5/02/05 5/12/05 5/23/05 5/23/05 5/23/05 6/27/05 6/29/05 12/05/05 9/12/05 12/7/05

						Default Order Granting Judgment (\$100,000/Civil; \$10,000/Admin. & Injunction)	Default
MidAmerican Energy Council Bluffs (4)		Air Quality	Operation Without Permit	Referred to Attorney General	Referred Petition Filed Consent Decree Civil/ Injunction)		6/05/07 6/11/07 (\$27,500 6/11/07
Miller, Albert Kalona (6)	UPDATED	Air Quality Solid Waste	Open Burning; Illegal Disposal	Referred to Attorney General	Referred Petition Filed Motion for Partial Summary Judgment Hearing on Motion Ruling for State Granting Partial Summary Judgment		9/19/06 1/23/07 4/30/07 6/01/07 7/12/07
Miller Products Company Osceola (5)		Wastewater	Prohibited Discharge	Referred to Attorney General	Referred		12/05/06
Miller, Robert Batavia (6)	UPDATED	Air Quality Solid Waste	Open Burning; Illegal Disposal	Referred to Attorney General	Referred Petition Filed Motion for Partial Summary Judgment Hearing Date		8/15/06 1/23/07 6/21/07 8/20/07
Moellers, Kenneth Cresco (1)		Animal Feeding Operation	Prohibited Discharge – Open Feedlot; Failure to Report a Release; WQ Violations – General Criteria	Referred to AG	Referred Petition Filed		2/20/06 12/11/06
Organic Technologies; Tim Danley; Ken Renfrow; Mike Danley Warren Co. (5)		Solid Waste	Permit Violations	Referred to Attorney General	Referred Petition Filed Application for Temporary Injunction Temporary Injunction Trial Date Partial Judgment (Clean-up Order) Contempt Application Contempt Hearing Date Contempt Finding and Civil Penalty (\$100,000 and 30 Days in Jail – Suspended until 7/8/03) Hearing Regarding Contempt Order Regarding Bond/Cleanup Deadline Bond Posted State Objections to Bond Ruling Denying Objections		12/15/97 10/02/98 2/04/99 4/19/99 9/13/00 9/28/00 12/12/02 2/20/03 2/20/03 7/09/03 8/01/03 8/01/03 8/20/03 9/18/03 4/16/04 12/10/04 1/05/05

					to Bond	8/15/06
					Status Hearing Date	
					Hearing on Motion to Extend	
					Cleanup	
					Deadline	
					Order Reinstating \$100,000	
					Civil	
					Penalty	
					Site Clean-up Completed	
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Pedersen, Dean Laurens (3)	Animal Feeding Operation	Failure to Update Plan	Referred to Attorney General	Referred Petition Filed		4/17/06 12/11/06
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Pellett Chemical Co., Inc. Wiota (4) UPDATED	Underground Tank	Failure to Submit Tier 2 Site Assessment	Referred to Attorney General	Referred Petition Filed Defendant's Motion to Dismiss Resistance to Motion to Dismiss Hearing on Motion to Dismiss Ruling for State Denying Motion to Dismiss State's Motion for Summary Judgment Hearing Date		6/19/06 3/29/07 4/24/07 4/27/07 5/14/07 5/14/07 6/08/07 8/20/07
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Plymouth Dairy Farms Plymouth Co. (3)	Animal Feeding Operation	Prohibited Discharge – Confinement; Record Keeping; Application in Excess of Crop Usage Rate; Freeboard	Referred to Attorney General	Referred Petition Filed		9/19/05 1/10/06
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River Bluff Resort, LLC; C.J. Moyna & Sons, Inc.; P.A. McGuire Construction McGregor (1)	Wastewater	Stormwater – Pollution Prevention Plan Violations; Water Quality Violations – General Criteria	Referred to Attorney General	Referred		4/03/07
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Roquette America Keokuk (6)	Air Quality	DNR Defendant	Defense	Petition Filed DNR's Answer DNR's Resistance to Temporary Injunction Hearing on Temporary Injunction DNR's Brief in Resistance Roquette's Brief Ruling on Temporary Injunction Trial Scheduling Conference Trial Date Motion for Continuance Order Granting Continuance Trial Date		8/28/03 9/11/03 9/11/03 9/11/03 9/29/03 9/30/03 1/14/04 1/06/05 10/24/05 6/29/05 6/29/05 4/24/06 4/24-28/06 5/25/06

				Trial	6/02/06
				Roquette's Request to	6/19/06
				Reopen Evidence	6/21/06
				IDNR Resistance to Reopening	7/05/06
				Evidence	4/09/07
				Roquette's Reply to	5/04/07
				Resistance	5/07/07
				IDNR Motion/Supp.	6/08/07
				Resistance	6/08/07
				Order Denying Roquette's Request to Reopen Evidence	
				Partial Consent Order	
				IDNR's Proposed Ruling	
				Roquette's Proposed Ruling	
				IDNR's Reply	
				Roquette's Reply	
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Roquette America, Inc. Keokuk (6)	Air Quality	Construction Without Permit	Referred to Attorney General	Referred	9/19/06
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Rose Bowl, The Mason City (2)	Drinking Water	Monitoring/Reporting – Bacteria, Nitrate; Public Notice	Referred to Attorney General	Referred Petition Filed	7/17/06 1/22/07
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Schoenberr, R. B. d/b/a Long Branch Tavern Monmouth (1)	Drinking Water	Permit Renewal	Orders/Penalties	Referred Court Order Re-Referred Petition Filed Application for Contempt Contempt Hearing Order for Contempt (\$3,000 fine) Arrest Warrant Issued Contempt/Temporary Injunction Hearing Temporary Injunction Granted Contempt Hearing Date Contempt Hearing Order Finding Defendant in Contempt \$3,000 Fine Amended Petition	6/20/97 12/09/98 11/21/02 3/11/05 3/11/05 4/01/05 8/05/05 4/01/05 5/03/05 5/03/05 7/06/05 8/05/05 8/05/05 1/31/06
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Sharkey, Dennis Dubuque Co. (1)	Air Quality Solid Waste	Open Burning; Illegal Disposal	Referred to Attorney General	Referred	4/03/07
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Simpson, Barry Worth Co.	Animal Feeding Operation	DNR Defendant	Defense	Petition Filed Answer Filed	10/18/04 11/04/04
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SNF, Inc. dba Brand FX Body Pocahontas (3)	Air Quality	Operational Violations	Referred to Attorney General	Referred	9/19/06
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Stone v. Rembrand Enterprises, Inc.	Animal Feeding Operation	DNR Defendant	Defense	Petition Filed	12/06/04
				State Motion to Dismiss	1/10/05
				Hearing	3/07/05
				Ruling Dismissing Damage Claims	5/17/05
				State's Motion for Summary Judgment	2/27/06
				Order Granting Continuance	3/20/06
				Hearing on Summary Judgment	5/01/06
				State's Supp. Reply to Plaintiff's	6/19/06
				Resistance to Motion for Summary Judgment	10/04/06
				Ruling Denying Motion for Summary Judgment	11/03/06
				Application for Interlocutory Appeal	11/03/06
				Memorandum in Support of Interlocutory Appeal	1/08/07
				Application Denied	1/22/07
				Motion for Separate Trial	3/05/07
				Hearing on Motion for Separate Trial	3/14/07
				Order Granting Separate Trial	4/06/07
				Trial Brief	4/13/07
				Reply Brief	4/16/07
				Trial Date	
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Sweitzer, Chad and Lona; Winter Mobile Home Park New Hampton (1)	Drinking Water	Operation Permit; Monitoring/Reporting – Bacteria; MCL – Bacteria	Without	Referred to Attorney General	11/14/06
				Referred	5/03/07
				Petition Filed	8/16/07
				Demand for Default	
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U.S. Nation Mart, Inc.; Ved Pal; Babli Saini Davenport (6)	Underground Tank	Leak Detection; UST System Deficiencies		Referred to Attorney General	5/01/07
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Yentes, Clifford Council Bluffs (4)	Solid Waste	Illegal Disposal		Referred to Attorney General	4/03/07
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Iowa Department of Natural Resources
Environmental Services
Report of WW By-passes

During the period July 1, 2007 through July 31, 2007, 14 reports of wastewater by-passes were received. A general summary and count by field office is presented below. This does not include by-passes resulting from precipitation events.

Month	Total	Avg. Length (days)	Avg. Volume (MGD)	Sampling Required	Fish Kill
October '06	3(11)	0.427	0.055	1	0(0)
November '06	3(7)	0.063	0.033	2	0(0)
December '06	11(7)	0.862	0.016	1	0(0)
January '07	7(10)	0.213	0.004	1	0(0)
February '07	34(6)	0.386	0.070	6	0(0)
March '07	14(12)	0.162	0.011	3	0(0)
April '07	22(12)	0.393	0.068	5	0(0)
May '07	8(11)	0.565	7.386	1	0(0)
June '07	11(9)	0.059	0.001	2	0(0)
July '07	14(9)	0.389	0.045	7	0(0)
August '06	15(13)	0.196	0.023	8	0(0)
September '06	9(3)	0.285	0.024	0	0(0)

(numbers in parentheses for same period last year)

Total Number of Incidents Per Field Office This Period:

1	2	3	4	5	6
3	2	0	2	0	7

4/26/99	Gerald and Judith Vens	6	Order/Penalty	FP	Clark	4/09/07 – Internal meeting with DNR management set for 4/12/07. 5/09/07 – Clark calls Vens' attorney and extends settlement offer. Attorney agrees to inform client and get back to Dept. with response. 5/16/07 – Response from Vens' attorney indicating qualified agreement with settlement offer pending an inspection by DNR staff.
12/01/99 12/08/99	Iowa Select Farms, L.P./AG Waste Consultants, Inc.	2	Order/Penalty	AFO	Clark	4/10/07 – ISF and Dept. attorneys unsuccessful attempt to contact AG Wastes Consultants attorney. 6/15/07 – Dept. obtains new telephone number for Ag Waste Consultants' attorney and leaves message for return call regarding settlement of case. 7/05/07 – Order amended to remove ISF as responsible party. Ag Waste Consultants' appeal sent to DIA.
7/13/00	Dan Witt	6	Order/Penalty	AFO	Clark	1/10/07 – FO6 staff visited the site to determine the current status and observed that the AFO portion of the farm operations has been closed. Hearing scheduled for 9/10/07.
10/02/01	Daryl Larson	6	Order	AFO	Clark	6/26/07 – Sent to DIA.
11/27/01	Dallas County Care Facility	5	Order/Penalty	WW	Hansen	10/03 – Letter to County attorney regarding appeal resolution. 1/04 – Letter to attorney regarding appeal. 4/04 – Dept. letter to attorney regarding appeal. 9/04 – Dept. letter to attorney regarding appeal. 6/26/07 – Appeal resolved. Facility connected to City WWTF.

						Consent order to be issued.
1/23/02	Clearview Mobile Home Park	6	Permit Conditions	WW	Hansen	10/31/02 – Construction permit issued for improvement to lagoon system. 10/31/03 – Update on construction project requested from Dept. engineer. 1/30/04 – Status report requested from Dept. staff. 2/24/04 – Letter sent to attorney regarding resolving appeal. 3/15/04 – Letter from facility attorney regarding proposed upgrade with sand filters. 4/26/04 – Dept. letter to MHP attorney requesting construction schedule for project. 5/17/04 – Letter from MHP attorney with new schedule. 10/18/06 – Letter to attorney regarding schedule for resolving appeal. 11/06 – Letter from MHP attorney regarding projects on hold due to revisions in WQ standards rules. Set for Hearing on 10/12/07.
7/18/02	Mt. Pleasant, City of	6	Order/Penalty	WW	Hansen	\$500 penalty payment received for uncontested portion. 12/03 – Dept. letter with settlement offer. 1/30/04 – Dept. letter sent regarding settlement. 2/24/04 & 3/31/04 – Follow-up letters sent regarding settlement. 4/26/04 – Letter received from City attorney regarding Dept. settlement proposal. Set for Hearing on 10/05/07.
7/23/02	Doug Wedemeyer	4	Order/Penalty	AFO	Clark*	4/4/07 – FO4 provides status update. 6/29/07 – Sent to DIA.
11/27/02	Chelsea, City of	5	Order/Penalty	WW	Hansen*	9/18/03 – DNR letter. Will monitor for compliance through winter of 2004. 4/07 – FO5 to conduct compliance inspection. 4/19/07 - Inspection report issued to facility. 5/07 - Letter to City regarding resolution of appeal. 5/25/07 – Letter to City with Dept. settlement offer. 6/12/07 – Settled. Consent order sent to attorney for review and signature. 8/07 Consent Order signed by City.
2/10/03	Doug Osweiler	6	Order/Penalty	AFO	Clark	Hearing scheduled for 9/18/07.
2/24/03	Ray Slach	6	Order/Penalty	AFO	Clark	6/26/07 – Sent to DIA.
4/04/03	Natural Pork Production II, LLP (03-AFO-13)	6	Order/Penalty	AFO	Clark*	3/10/07 – Attorney for NPPII responds to DNR's inquiry, indicating that he will get with client and then back with DNR in next week. 4/10/07 – After Clark leaves message for NPPII attorney, asking for status update, NPPII attorney indicates his client asserts case should be dismissed. 5/9/07 – Dept. refuses to dismiss case and counters with reduced penalty offer. 6/15/07 – Consent Amendment to Order issued; appeal dismissed. Penalty due 6/29/07.
4/25/03	Ag Processing Inc.	2	Permit Conditions	AQ	Preziosi	Continuing to negotiate.
8/29/03	Country Living Mobile Home Park	5	Order/Penalty	WW	Hansen	6/23/04 – Construction permit issued. Settlement offer will be made. 9/04 – Status report from Dept. engineer requested regarding project status. 10/05 – Status report requested from Dept. engineer. 11/05 – Facility upgrade completed. New NPDES permit requested for upgraded facility. 12/16/05 – Settlement offer received from MHP attorney. 5/07 – Letter to MHP attorney about appeal and setting for hearing. Set for hearing on 10/19/07.
9/05/03	Strawberry Point, City of	1	Order/Penalty	WW	Hansen*	1/5/04 – City to upgrade facilities, compliance will be monitored through 2005. 4/07 – Letter to City regarding appeal. . 4/25/07 - Response from City Attorney. 5/11/07- Dept. offer of settlement. 6/14/07 – City counter offer to Dept. 6/20/07 – Dept. rejected counter offer. City to consider

						options at City Council meeting on 6/20/07. Council postponed action to next meeting in July. Appeal to be set for hearing if not settled. 7/13/07- City agreed to Dept. settlement offer. 7/20/07 CO sent to City attorney for signature.
10/08/03	TEGH, Inc. (03-UT-15)	6	Order/Penalty	UT	Wornson	Dismissed AO without prejudice as to TEGH, INC. Case closed.
10/27/03	B & H Food & Gas, Inc. (03-UT-12)	6	Order/Penalty	UT	Wornson	Dismissed AO without prejudice as to B & H. Case closed.
10/27/03	U.S. Nation Mart, Inc. (03-UT-14)	6	Order/Penalty	UT	Wornson	Notice of Hearing sent. Hearing scheduled. Expected to settle as part of the Attorney General's referral on separate violations.
12/02/03	Jeff Holland	2	Order/Penalty	AFO	Clark	6/6/07 - Dept. letter to Mr. Holland indicating case will be sent to DIA if settlement not reached by 6/22/07. 6/14/07 - Phone call from Mr. Holland. Tentative settlement pending receipt of swine depopulation history.
12/15/03	AGP (Emmetsburg)	3	Permit Conditions	AQ	Preziosi	Continuing to negotiate.
1/30/04	John Schmall d/b/a Carpenter Bar & Grill	2	Order/Penalty	WS	Hansen	2/26/04 - Letter to WS attorney regarding resolving appeal. 9/04 - Per WS section, facility has returned to compliance. 11/06 - Facility building burned down, facility closed. 5/07- Dept. letter to attorney about resolving appeal. 5/25/07 - Settled. Consent order sent to attorney to be signed. 7/07- At request of attorney, CO sent to John Schmall for signature.
2/09/04	Swine USA, LP	5	Order/Penalty	AFO	Clark	2/2/07 - Draft Consent Order sent to attorney for new owner. 6/19/07 - Clark sends email concerning issues at other former Swine USA operations acquired by Whitestone. 6/27/07 - Whitestone attorney responds with general agreement to settlement but needs to confirm with client.

2/16/04	Iowa Ethanol, LLC; Reilly Construction Co., Inc.	2	Order/Penalty	WW	Clark*	6/29/07 – Sent to DIA.
2/17/04	Broin & Assoc., Inc. aka Otter Creek Ethanol, LLC	3	Order/Penalty	WW	Clark*	Meeting held 4/07/04. 6/29/07 – Sent to DIA.
2/17/04	Broin & Assoc., Inc. aka Iowa Ethanol, LLC	2	Order/Penalty	WS/WW	Clark*	Meeting held 4/07/04. 6/29/07 – Sent to DIA.
2/18/04	Gettler Dairy, Inc.; Dave and Kristen Gettler	4	Order/Penalty	AFO	Clark	4/4/07 – FO4 agrees to perform a site visit to verify remedial work. 5/2/07 – FO4 visits site and reports observations. 6/15/07 – Clark leaves telephone message for Gettler inviting settlement discussion. 6/20/07 – Clark and Gettler discuss case via phone. Settlement offer by Gettler sent to FO4 for response. 6/27/07 – Verbal settlement reached. DNR will prepare Consent Amendment to Order.
4/08/04	Silver Creek Feeders	4	Permit Conditions	AFO	Clark	Negotiating before filing.
4/16/04	Ag Processing Inc. (Sheldon)	3	Permit Conditions	AQ	Preziosi	Continuing to negotiate.
5/12/04	Ag Processing, Inc.	3	Permit Conditions	AQ	Preziosi	Continuing to negotiate.
5/18/04	Alton, City of	3	Order/Penalty	FP	Clark	3/15/07: Attorney for Alton returned Dept. phone call and agreed to check with client regarding settlement offer. 5/08/07 - Dept. called Attorney for Alton. Settlement offer delayed due to change in Alton administration. Will submit offer to DNR by 5/18/07. 6/15/07 - Dept. sends letter with settlement offer and deadline for acceptance or case will be sent to DIA. 6/21/07 - Alton's attorney sends counter offer. 6/25/07 - Dept. rejects Alton's offer but sends slight reduction to original offer. 6/27/07 – Alton accepts DNR offer. DNR will prepare Consent Amendment to Order. 7/2/07 – Consent Amendment sent to Alton's attorney.
5/25/04	CDI, LLC	6	Permit Conditions	AQ	Preziosi	ALJ Proposed Decision issued 12/29/06 and appealed. Appeal will be addressed at April 2007 EPC meeting. Appealed to District Court 5-1-07.
5/27/04	CDI – Charles City	2	Permit Conditions	AQ	Preziosi	ALJ Proposed Decision issued 12/29/06 and appealed. Appeal will be addressed at April 2007 EPC meeting. Appealed to District Court 5-1-07.
6/11/04	University of Iowa	6	NPDES Permit	WW	Hansen	Set for hearing on 10/22/07.
6/18/04	CDI – Charles City	2	Title V Permit Determination	AQ	Preziosi	ALJ Proposed Decision issued 12/29/06 and appealed. Appeal will be addressed at April 2007 EPC meeting. Appealed to District Court 5-1-07.
6/18/04	Phillip Renze	3	Order/Penalty	AFO	Clark	3/22/07 – Dept. sends draft consent amendment to Renze's attorney. 5/10/07 – Dept. calls Renze's attorney for status update; attorney apologizes for delay and commits to providing a response in 24 hours. As of noon, 5/14/07, Dept. has not received a response. 5/10/07 – Clark calls Renze's attorney for status update; attorney apologizes for delay and commits to providing a response in 24 hours. As of 6/21/07 Dept. has not received a response. 6/25/07 – Clark resends 3/22/07 message to Renze's attorney and asks for update. 6/28/07 – Sent to DIA
6/24/04	Jansma Cattle Co., Inc.	3	Order/Penalty	AFO	Tack*	Request for hearing sent to DIA.
6/28/04	Michael Veenstra; Alan Veenstra	5	Order/Penalty	AFO	Clark	6/21/07 – Clark phones Veenstras' attorney who agreed to discuss case with clients. 6/27/07 – Settlement offer from Veenstra's attorney. DNR responds with counter offer.

						6/28/07 – Veenstra accepts counter offer. DNR will prepare Consent Amendment to Order. 7/2/07 – Consent Amendment sent to Veenstra attorney
10/19/04	Cedar Rapids, City of	1	Order/Penalty	WW	Hansen*	5/07 - Dept. letter to City regarding setting case for hearing. 6/26/07 – Sent to DIA to be set for hearing.
11/02/04	Mike Elsbernd	1	Order/Penalty	AFO	Book	Order and penalty affirmed. Inability to pay claim being evaluated by Department. Offer to reduce penalty rejected, will be turned over to Revenue and Finance. Inability to pay claim being redone.
11/10/04	Ted T. Smith	3	Order/Penalty	AFO	Clark	4/10/07 – Clark discusses appeal with Mr. Smith. He will consult with his representatives and decide whether to go to hearing or withdraw appeal. 5/07 – Smith and Clark exchange phone messages. 6/13/07 – Dept. letter to Smith indicating case will be sent to DIA if settlement not reached by 6/22/07. 6/21/07: Smith phones Clark and makes settlement offer. 6/29/07 – DNR rejects settlement offer and sends case to DIA.
1/20/05	Monty Branstad	2	Order/Penalty	AQ/ SW	Preziosi	Settled. Awaiting penalty payment.
2/04/05	Honey Creek Campground	4	Order/Penalty	WW	Hansen	12/07/05 – Telephone call with Honey Creek attorney regarding hearing and compliance issues. 3/22/06 – Meeting at FO 4 with wastewater owner and attorney. 4/5/06 – FO4 inspection of campground. 5/12/06 – FO letter to facility regarding inspection. 5/22/06 – Letter received from Honey Creek attorney requesting waiver of penalty in view of inspection. Letter to Honey Creek attorney rejecting request to waive penalty. 4/07 – Letter to Honey Creek regarding penalty and setting for hearing. 5/07 to be sent to DIA. Scheduled for hearing 7/13/07. Settled. Hearing continued pending finalization of settlement. 7/07- CO sent to attorney to be signed.
2/17/05	CDI, LLC	2	Permit Conditions	AQ	Preziosi	ALJ Proposed Decision issued 12/29/06 and appealed. Appeal will be addressed at April 2007 EPC meeting. Appealed to District Court 5-1-07.
2/24/05	Mt. Joy Mobile Home Park	1	Order/Penalty	WW	Hansen	10/06 – Letter to MHP regarding settlement of appeal. 11/06 – Information received from MHP owner regarding MORs and certified operator. 4/07 – Letter to MHP regarding appeal and setting for hearing. 5/07- Settled. Consent order sent to MHP owner to be signed. 5/24/07 – Consent order not signed. Telephone call with owner regarding consent order. 6/21/07 – Sent to DIA to be set for hearing. Settled. MHP owner to pay penalty and sign consent order. 7/07- CO signed and issued, penalty paid. Case closed.
3/25/05	Hoover Land Corp.	2	Order/Penalty	WS	Hansen	6/26/07 – Letter sent to WS attorney. 6/29/07 – Settled. 7/03/07 – Consent order sent to attorney for signature. 7/07- Order signed by Hoover Land and Director. Order issued 07/31/07. Case closed.
4/04/05	Ruby Field; Ed Grafke	6	Order/Penalty	UT	Wornson	Mortgagee (bank) has agreed to close the UST as part of their foreclosure process. Notice of Hearing sent. Hearing scheduled. If UST is closed with NFA, will likely dismiss as to Ruby Field, Inc. and Ed Grafke.
	Dirk D. Graves	4	Order/Penalty	AQ	Tack	Hearing reset for 8/10/07.

4/05/05						
5/25/05	Iowa Quality Beef Cooperative	5	Order/Penalty	WW	Hansen	6/26/06 – FO meeting with company officials to discuss reopening of plant. 7/12/06 – FO inspection of plant. 10/06 – To be set for hearing. Hearing set for 10/29/07.
8/05/05	Scott Lenz	4	Order/Penalty	AFO	Book	Producer submitted offer, Department reviewing offer. Awaiting decision from producer. Settled, signed amendment in place.
11/21/05	CDI, LLC	2	Construction Permit	AQ	Preziosi	ALJ Proposed Decision issued 12/29-06 and appealed. Appeal will be addressed at April 2007 EPC meeting. Appealed to District Court 5-1-07.
2/27/06	Greig & Co., Inc.	3	NPDES Permit	WW	Clark	Negotiating before filing.
3/28/06	Jordan Branstad; Edward Branstad	2	Order/Penalty	AQ/ SW	Preziosi	Settled. Awaiting penalty payment.
4/10/06	Praxair, Inc.		Permit Conditions	AQ	Preziosi	Negotiating.
7/07/06	Washington County (Permittee: Riverside Casino)	6	Water Use Permit	WR	Clark	Negotiating before filing.
8/09/06	Cargill (Eddyville)	5	Permit Conditions	AQ	Preziosi	Waiting to hear from Cargill engineer. Meeting will be set with technical staff.
8/28/06	Winnebago Industries, Inc.	2	Title V Permit	AQ	Preziosi	ALJ Proposed Decision issued 12/29/06 and appealed. Appeal will be addressed at April 2007 EPC meeting. Appealed to District Court 5-1-07.
10/06/06	Ted Dickey dba Dickey Farms	6	Order/Penalty	AQ/ SW/ AFO	Book	Hearing scheduled for 10/1/07.
12/27/06	Piper Motor Co. Inc.	6	Order/Penalty	AQ/ WW	Tack	Reviewing discovery responses.
1/08/07	Cargill (Eddyville) 02-A-393-S3, 02-A-394-S2, 02-A-395-S2, 02-396-S3, 05-A-930, 05-A-931	5	Permit Conditions	AQ	Preziosi	Negotiating before filing.
1/09/07	Charlie Van Meter; Van Meter Feedyard	5	Permit Conditions	WW	Clark	Negotiating before filing.
1/11/07	Clow Valve Company (20 Permits)	5	Permit Conditions	AQ	Preziosi	Negotiating before filing.
5/11/07	Bedrock Gravel	3	Order/Penalty	AQ/ SW	Tack	Negotiating before filing.
5/29/07	Environmental Reclamation and Recycling, LLC		Notice of Intent to Rescind Beneficial Use Determination	SW	Tack	Negotiation.
6/13/07	Crossroads Cattle Co.; John Reisz	4	Permit Conditions	WW	Clark	Negotiating before filing.
6/15/07	Phoenix C & D Recycling, Inc.; and R & A Properties	5	Beneficial Use Determination	SW	Tack	Negotiating before filing.
6/19/07	Goldsmith and Son, Inc.; John E. Goldsmith; Patti R. Goldsmith; and J & G Pallet, LLC	3	Order/Penalty	WW	Hansen	7/07- Facility returned to compliance.
6/25/07	Rick Onken		Permit Conditions	WW	Clark	Negotiating before filing.
8/02/07	Postville, City of		Permit Denial	WW	Tack	New case.
8/10/07	Tate & Lyle Ingredients Americas	2	Permit Conditions	AQ	Preziosi	New case.
8/10/07	Port Louisa Land Co.; E. A. Hicklin	6	Variance Denial	FP	Clark	New case.

DATE: September 1, 2007

TO: EPC

FROM: Ed Tormey

RE: Enforcement Report Update

The following new enforcement actions were taken during this reporting period:

Name, Location and Field Office Number	Program	Alleged Violation	Action	Date
Washington, City of (6)	Wastewater	Compliance Schedule	Consent Order Stip. Penalties	7/24/07
Anthony Trucking, Inc. LeMars (3)	Wastewater	Operation Without Permit	Consent Order \$5,000	7/24/07
Doug Orwig Site #1, Dickinson Co. (3)	Animal Feeding Operation	Failure to Submit Plan	Admin. Order \$3,500	7/24/07
L & M Machine, LTD d/b/a L & M Machine and Construction; Bob Joens Riceville (2)	Air Quality Solid Waste	Open Burning; Asbestos; Illegal Disposal	Consent Order \$2,000	7/24/07
Cerro Gordo County; City of Meservey (2)	Wastewater	Construction Without Permit; Operational Violations	Consent Order \$1,250; \$5,800 SEP	7/24/07
Hoover Land Corp. of Algona; River Road Golf Club Algona (2)	Drinking Water	MCL – Bacteria; Public Notice	Consent Amendment \$700	7/31/07
Peeters Development Co.; Mt. Joy MHP, Scott Co. (6)	Wastewater	Monitoring/Reporting; Operational Violations; Discharge Limits	Consent Amendment \$5,000	7/31/07
Alton, City of (3)	Flood Plain	Construction Contrary to Permit Conditions	Consent Amendment \$2,500	8/01/07
Schult Enterprises, LLC; Michael Schult d/b/a Schult Engineering, Princeton (6)	Hazardous Condition	Failure to Notify; Remedial Action	Consent Order	8/01/07
Michael Veenstra; Alan Veenstra, Mahaska Co. (5)	Animal Feeding Operation	Illegal Disposal; Construction Contrary to Permit; Separation Distance	Consent Amendment \$2,500	8/08/07
Wellman Dynamics Corp.,	Air Quality	Construction Without Permit;	Consent Order	8/08/07

Creston (4)	Construction Contrary to Permit	\$10,000		
Adam Anderson, Armstrong	Drinking Water Wastewater	License Discipline	Consent Order	8/08/07
Wiota, City of (4)	Drinking Water	MCL-Bacteria; Public Notice	Admin. Order	8/13/07

**IOWA DEPARTMENT OF NATURAL RESOURCES
ENVIRONMENTAL PROTECTION COMMISSION
RULEMAKING STATUS REPORT
September, 2007**

1. Ch. 20, 33 – PSD and Title V Ethanol Plants	7/02/07	8/01/07	6091B	8/14/07	*9/05/07	*9/06/07	*10/01/07	*10/01/07	*10/24/07		*11/13/07	*11/28/07
2. Ch. 20, 22, 23 – Permitting Rules for Grain Elevators	8/07/07	*8/29/07		*9/10/07	*9/24, 26/07 *10/01/07	*10/02/07	*10/01/07	*10/01/07	*10/24/07		*11/13/07	*11/28/07
3. Ch. 28 – Revisions to Federal Air Quality Standards	1/02/07	1/31/07	5692B	2/02/07	3/05/07	3/09/07	9/03/07	*9/03/07	*9/26/07		*10/09/07	*10/31/07
4. Ch. 34 – AQ – Amendments to CAIR and CAMR Provisions	7/02/07	8/01/07	6092B	8/14/07	*9/04/07	*9/05/07	*10/01/07	*10/01/07	*10/24/07		*11/13/07	*11/28/07
5. Ch. 40, 43 – Minor Water Main Construction Permit	3/06/07	3/28/07	5795B	4/03/07	4/19/07	4/20/07	7/02/07	7/02/07	8/01/07	6074B	*9/03/07	*9/05/07
6. Ch. 61 – WQS – Chemical Criteria Revisions	5/01/07	5/23/07	5898B	6/11/07	6/14, 19, 21 and 26/07	7/10/07	*10/01/07	*10/01/07	*10/24/07		*11/13/07	*11/28/07
7. Ch. 93 – Nonpoint Source Control Program	5/01/07	5/23/07	5901B	6/11/07	6/14/07	6/21/07	8/06/07	8/06/07	*8/29/07		*9/05/07	*10/03/07
8. Ch. 103-106, 112, 114, 115, 118, 120-123 – Financial Assurance Regulations	12/05/06	1/03/06	5633B	2/06/07	3/28/07	3/28/07	9/03/07	*9/03/07	*9/26/07		*10/09/07	*10/31/07
9. Ch. 113 – Sanitary Landfills for Municipal SW: Groundwater Protection Systems for the Disposal of Non-Hazardous Wastes	11/14/06	12/06/06	5597B	1/03/07	1/22, 24 and 26/07	1/26/07	6/05/07	6/05/07	7/04/07	5999B	7/10/07	2 nd 60-day delay *8/08/07
10. Ch. 135 – Technical Standards and Corrective Action Requirements for Owners and Operators of USTs	7/02/07	8/01/07	6072B	8/14/07	8/21-23/07	8/24/07	*10/01/07	*10/01/07	*10/24/07		*11/13/07	*11/28/07

Iowa Department of Natural Resources
Environmental Services Division
Report of Manure Releases

During the period July 1, 2007, through July 31, 2007, 0 reports of manure releases were forwarded to the central office.

A general summary and count by field office is presented below.

Month	Total Incidents	Feedlot	Confinement	Land Application	Transport	Hog	Cattle	Fowl	Other	Surface Water Impacts
October	12 (13)	0 (1)	9 (2)	0 (1)	3 (9)	9 (12)	0 (1)	3 (0)	0 (0)	1 (1)
November	10 (8)	0 (0)	2 (1)	3 (3)	5 (4)	8 (6)	1 (2)	1 (0)	0 (0)	1 (1)
December	5 (2)	0 (0)	5 (1)	0 (0)	0 (1)	4 (0)	1 (2)	0 (0)	0 (0)	1 (0)
January	4 (3)	0 (0)	3 (2)	1 (1)	0 (0)	4 (1)	0 (2)	0 (0)	0 (0)	0 (0)
February	4 (2)	0 (0)	2 (1)	0 (0)	2 (1)	3 (1)	1 (1)	0 (0)	0 (0)	1 (0)
March	7 (2)	0 (1)	6 (1)	0 (0)	0 (0)	6 (0)	0 (2)	0 (0)	0 (0)	2 (2)
April	4 (6)	2 (0)	2 (2)	0 (2)	0 (2)	2 (6)	2 (0)	0 (0)	0 (0)	2 (1)
May	5 (6)	0 (0)	2 (3)	2 (3)	0 (0)	3 (5)	1 (1)	0 (0)	0 (0)	0 (0)
June	7 (2)	1 (0)	2 (0)	0 (0)	3 (2)	4 (2)	2 (0)	0 (0)	0 (0)	0 (0)
July	0 (5)	0 (2)	0 (0)	0 (1)	0 (2)	0 (3)	0 (2)	0 (0)	0 (0)	0 (0)
August	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)
September	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)
Total	58 (49)	3 (4)	33 (13)	6 (11)	13 (21)	43 (36)	8 (13)	4 (0)	0 (0)	8 (5)

(numbers in parentheses for the same period last year)

Total Number of Incidents Per Field Office This Period:

1	2	3	4	5	6
0	0	0	0	0	0

IOWA DEPARTMENT OF NATURAL RESOURCES
COMPLIANCE AND ENFORCEMENT BUREAU

DATE: September 1, 2007

TO: Environmental Protection Commission

FROM: Ed Tormey

SUBJECT: Summary of Administrative Penalties

The following administrative penalties are due:

NAME/LOCATION	PROGRAM	AMOUNT	DUE DATE
Robert and Sally Shelley (Guthrie Center)	SW	1,000	3-04-91
Verna and Don Reed; Andrea Silsby (Union Co.)	SW	1,000	4-07-94
Elery Fry; Allen Fry; Becky Sandeen (Monroe Co.)	SW	6,000	1-20-96
Daryl & Karen Hollingsworth d/b/a Medora Store(Indianola)	UT	8,042	3-15-96
Robert Jeff White (Dallas Co.)	AQ/SW	10,000	7-14-97
Greg Morton; Brenda Hornyak (Decatur Co.)	SW/AQ/WW	3,000	11-04-98
Ray Stamper; Bryan Zenor (Polk Co.)	SW	2,000	12-12-98
Otter Creek Station (Dubuque Co.)	WS	325	3-04-99
Lindahl & Sons Salvage (Boone)	AQ/SW	10,000	11-29-00
R & R Ranch (Osceola)	WW	10,000	8-30-00
Alice Hillhouse; Hillhouse Real Estate Corp. (Denison)	UT	3,000	2-28-01
Teckenburg, Inc.; Jerry Teckenburg (Cedar Rapids)	UT	6,380	7-06-01
Keith Craig; The Farm (Council Bluffs)	UT	3,890	8-08-01
James Harter (Fairfield)	WW	1,780	8-01-01
Wisconsin North dba National Petroleum, Inc. (Clinton)	UT	5,000	8-04-01
# Troy DeGroote; Casey DeGroote (Butler Co.)	AFO/AQ/SW	242	3-08-02
Charlotte Caves (Oskaloosa)	HC	10,000	4-03-02
# Practical Pig Corporation (Clinton Co.)	AFO	2,000	5-26-02
Mobile World, L.C. (Camanche)	WW	2,000	5-27-02
M-F Real Estate; Fred "Butch" Levell (Carter Lake)	HC	1,701	8-18-02
Midway Oil Co.; David Requet (Davenport)	UT	5,355	9-20-02
Dale Schaffer (Union Co.)	AQ/SW	10,000	11-05-02
	UT	32,690	2-28-03
U.S. PETRO, INC.; SSJG PETROLEUM; SUKHDEV SINGH			
	UT	44,900	2-28-03
MIDWAY OIL CO.; DAVID REQUET; JOHN BLISS			
Green Valley Mobile Home Park (Mt. Pleasant)	WW	5,000	4-23-03
Midway Oil Company (West Branch)	UT	7,300	5-03-03
Midway Oil Company (Davenport)	UT	5,790	5-03-03
Efren Valdez (Warren Co.)	SW	2,782	6-09-03
Albert Miller (Kalona)	AQ/SW	10,000	9-26-03

* Jerry Feilen and Rick Bain (Pottawattamie Co.)	AQ/SW	1,663	12-15-03
Robert L. Nelson (Orient)	UT	617	12-26-03
Mark Anderson (Des Moines Co.)	AQ/SW	6,188	3-22-04

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Mike Phillips aka Jeff Phillips (Cambridge)	AQ	5,000	3-27-04
Mike Messerschmidt (Martinsburg)	AQ/SW	500	4-13-04
Interchange Service Co., Inc., et.al. (Onawa)	WW	6,000	5-07-04
Emer Carlson (Fairfield)	AQ	6,500	6-01-04
#*Floyd Kroeze (Butler Co.)	AFO	1,500	6-01-04
Iowa Falls Evangelical Free Church (Iowa Falls)	WS	750	6-13-04
Mitchell Town Pump (Mitchell)	WS	2,080	6-16-04
# Dunphy Poultry (Union Co.)	AFO	1,500	6-27-04
Shane Preder (Ft. Madison)	AQ	477	7-12-04
James L. Heal d/b/a A-1 Domestic (Homestead)	SW/WW	1,800	7-16-04
Ranch Supper Club (Swisher)	WS	300	8-02-04
#*James Boller (Kalona)	AFO	3,634	8-19-04
# Cash Brewer (Cherokee Co.)	AFO/SW	10,000	8-25-04
Spillway Supper Club (Harpers Ferry)	WS	1,500	9-06-04
David Niklasen (Shelby Co.)	SW	100	9-11-04
# Doorenbos Poultry; Scott Doorenbos (Sioux Co.)	AFO	1,500	10-09-04
T & T Corner Bar (McIntire)	WS	3,000	10-26-04
Rock N Row Adventures (Eldora)	WS	3,000	10-23-04
# Jason Fox (Audubon Co.)	AFO	1,000	11-27-04
# Norm Cleveringa (Lyon Co.)	AFO	750	11-27-04
Americana Bowl (Ft. Madison)	WS	100	11-28-04
Howard Traver, Jr. (Cass Co.)	SW	3,000	12-14-04
Valley Country Café; NOO Investment Co. (Cass Co.)	WS	5,000	2-18-05
Denzel Edwards (Cass Co.)	AQ/SW/HC	500	3-01-05
* Fran Oil Company (Council Bluffs)(3 Admin. Orders)	UT	4,300	4-09-05
Virgil Ehlers; Ehlers Oil Co. (Soldier)	UT	8,040	4-23-05
* Reginald Parcel (Henry Co.)	AQ/SW	260	4-23-05
Harold Linnaberry (Clinton Co.)	SW	1,000	5-18-05
* Country Stores of Carroll, Ltd. (Carroll)	UT	1,408	6-06-05
Elery Fry; Allen Fry; Mel Fry; Ron Fry (Moravia)	SW	10,000	6-20-05
Fedler and Company; Tony Fedler (Mt. Pleasant)	HC	3,670	6-25-05
# Matt Hoffman (Plymouth Co.)	AFO	750	8-08-05
Vernon Kinsinger (Washington Co)	SW	3,930	12-31-05
# Joel McNeil (Kossuth Co.)	AFO	2,500	1 21-06
Carl Cliburn (Wapello Co.)	AQ/SW	3,474	2-03-06
TOMA Properties, LLC (Washington)	WS	1,000	2-17-06
Affordable Asbestos Removal, Inc. (Monticello)	AQ	7,000	4-28-06
Jeff Albrecht (Humboldt Co.)	AQ	500	5-06-06
CRM Enterprises; Envirobest, Inc. (Iowa City)	AQ	7,000	5-21-06
#*Tony Mertens (Mt. Pleasant)	AFO	2,644	7-20-06
#*Dale Schumann (Buena Vista Co.)	AFO	2,000	8-01-06
# Troy VanBeek (Lyon Co.)	AFO	3,500	10-16-06
Rueter & Zenor Co.; Rueters Red Power (Carroll) SEP	AQ/SW	400	11-06-06
# Randy Rudolph (Audubon Co.)	AFO	3,500	11-06-06
Larry Bergen (Worth Co.)	AQ/SW	2,000	11-01-06
#*Galen Drent (Boyden)	AFO	1,510	2-01-07
#*Richard Beelner; Beelner 1 and 2 (Plymouth Co.)	AFO	600	4-01-07
Mobile World, LC; R. Victor Hanks (Clinton Co.)	WW	22,500	4-01-07
Edward Branstad; Monroe "Monty" Branstad (Forest City)	AQ	4,500	4-16-07
# Todd Kay (Buena Vista Co.)	AFO	3,000	4-16-07
# Garrelts Livestock Feeders (Palo Alto Co.)	AFO	3,000	5-02-07
# Crossroads Cattle Co. (Council Bluffs)	AFO	9,500	6-14-07

* Fred Miller; Earthworks Contracting (Quimby)	AQ	7,320	7-15-07
James L. Heal; A-1 Imports (Homestead)	WW/SW	10,000	7-18-07
#*Ross McCaw; McCaw Pumping Co. (Iowa Co.)	AFO	7,500	7-20-07
* Waddell's Metal Recycling (Blue Grass)	AQ	250	8-01-07
* Country Terrace Mobile Home Park (Ames)	WW	370	8-01-07
#*Michael and Karen Schieltz (Dubuque Co.)	AFO	1,830	8-07-07
#*Neal Rupiper (Carroll)	AFO	4,125	8-10-07
#*Harvey Driesen (Sioux Co.)	AFO	500	8-15-07
#*E & N Farms, Ltd. (Lyon Co.)	AFO	400	8-15-07
#*Randy Gergen; R & D Farms (Sioux Co.)	AFO	750	8-15-07
#*John Kauffman (Iowa City)	AFO	3,328	8-20-07
# Michael Veenstra; Allan Veenstra (Mahaska Co.)	AFO	2,500	8-22-07
* John Danker (Lee Co.)	AQ/SW	2,498	8-22-07
Anthony Trucking, Inc. (LeMars)	WW	5,000	8-24-07
City of Meservey	WW	1,250	8-24-07
* Crestview Mobile Home Park (Ames)	WW	250	9-01-07
# James Hogan; Hogan Brothers (Jones Co.)	AFO	2,184	9-01-07
* Curt Kline; Connie Kline (Dunlap)	AQ	500	9-01-07
* Larry Whitehead (Sidney)	UT	1,875	9-03-07
* Craig Burns (Postville)	WW	3,438	9-15-07
* Midway Water & Lighting Co., Inc. (Marion)	WS	900	9-20-07
Hoover Land Corp.; River Road Golf Club (Algona)	WS	700	9-30-07
#*Charles F. Deering, Jr. (Postville)	AFO	2,500	9-30-07
# Grand Prix Industries, Inc. (Kossuth Co.)	AFO	700	10-01-07
Wellman Dynamic Corp. (Creston)	AQ	10,000	10-08-07
#*Charles Wauters (Keystone)	AFO/SW	3,500	12-01-07
#*Joe Tomka (Carroll Co.)	AFO	3,500	12-01-07
#*Rahn Eischeid (Carroll Co.)	AFO	2,500	4-01-08
* Willey, City of	AQ/SW	2,000	6-01-08
# Doug Orwig Site #1 (Dickinson Co.)	AFO	3,500	-----
TOTAL		478,290	

The following administrative penalties have been appealed:

NAME/LOCATION	PROGRAM	AMOUNT
Gerald and Judith Vens (Scott Co.)	FP	5,000
# Iowa Select Farms, L.P.; AG Waste Consultants (Hamilton Co.)	AFO	3,000
# Dan Witt (Clinton Co.)	AFO	3,000
Dallas County Care Facility (Adel)	WW	5,000
# Doug Wedemeyer (Adair Co.)	AFO	2,500
Mt. Pleasant, City of	WW	500
Chelsea, City of	WW	3,000
# Doug Osweiler (South English)	AFO	5,000
# Ray Slach (Cedar Co.)	AFO	3,000
Country Living MHP (Altoona)	WW	5,000
Strawberry Point, City of	WW	10,000
B & H Food & Gas, Inc. (Davenport)	UT	10,000
U.S. Nation Mart, Inc. (Davenport)	UT	10,000
Tegh, Inc. (Bettendorf)	UT	8,500
# Jeff Holland (Winnebago Co.)	AFO	5,500
Carpenter Bar & Grill (Carpenter)	WS	10,000
# Swine USA; Davis Finishing Site (Clarke Co.)	AFO	750

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# Gettler Dairy (Guthrie Co.)	AFO	5,000
Iowa Ethanol, LLC; Reilly Construction Co. (Worth Co.)	WW	10,000
Broin & Assoc., Inc.; Iowa Ethanol, LLC (Worth Co.)	WS/WW	10,000
Broin & Assoc., Inc.; Otter Creek Ethanol (Osceola Co.)	WW	10,000
LeMars, City of	WW	9,000
# Jansma Cattle Co., Inc. (Lyon Co.)	AFO	10,000
# Phillip Renze; Doug Renze (Sac Co.)	AFO	2,000
Cedar Rapids, City of	WW	5,000
# Mike Elsbernd (Winneshiek Co.)	AFO	3,000
# Ted T. Smith (Buena Vista Co.)	AFO	3,000
S. J. Louis Construction, Inc. (Pleasant Hill)	WW	5,000
Monty Branstad (Winnebago Co.)	AQ/SW	8,000
Honey Creek Campground (Pottawattamie Co.)	WW	1,000
# Phillip Renze; Doug Renze (Sac Co.)	AFO	2,000
Dirk Graves (Glenwood)	AQ	1,000
Ruby Field, Inc.; Ed Grafke (Sigourney)	UT	5,112
# Ted Dickey dba Dickey Farms (Muscatine Co.)	AQ/SW/AFO	8,000
Iowa Quality Beef Supply Cooperative (Tama)	WW	10,000
Edward Branstad; Jordan Branstad (Winnebago Co.)	AQ/SW	8,000
Bruce Piper; Piper Motor Company, Inc. (Bloomfield)	AQ/WW	10,000
Bedrock Gravel, In. (Buena Vista Co.)	AQ/SW	10,000
Goldsmith & Son, Inc.; J & G Pallet LLC (Sergeant Bluff)	WW	10,000
TOTAL		234,862

The following administrative penalties have been collected:

NAME/LOCATION	PROGRAM	AMOUNT
# Robert Ness (Emmet Co.)	AFO	3,000
* Fred Miller; Earthworks Contracting (Quimby)	AQ	700
* Waddell's Metal Recycling (Blue Grass)	AQ	250
#*E & N Farms, Ltd. (Lyon Co.)	AFO	400
River Bend Farms, Inc.; Ken Root (Council Bluffs)	AQ/SW	1,200
# Natural Pork Production, II LLC (Shelby Co.)	AFO	1,000
L & M Machine & Construction; Bob Joens (Riceville)	AQ/SW	2,000
#*Randy Gergen; R & D Farms (Sioux Co.)	AFO	375
* Craig Burns (Postville)	WW	156
# Sebergan Pigs, Inc. (Lee Co.)	AFO	7,500
# James Hogan; Hogan Brothers (Jones Co.)	AFO	104
* Willey, City of	AQ/SW	1,000
* Midway Water & Lighting Co., Inc. (Marion)	WS	100
# Grand Prix Industries, Inc. (Kossuth Co.)	AFO	200
* Country Terrace Mobile Home Park (Ames)	WW	110
Peeters Development Co.; Mt. Joy MHP (Scott Co.)	WW	5,000
Alton, City of	FP	2,500
#*Michael and Karen Schieltz (Dubuque Co.)	AFO	361
Neal Rupiper (Carroll)	AFO	187
Schult Enterprises LLC; Schult Engineering (Princeton)	HC	2,000
* John Danker (Lee Co.)	AQ/SW	139
# Scott Lenz (Carroll Co.)	AFO	8,000
* Waddell's Metal Recycling (Blue Grass)	AQ	250
#*John Kauffman (Iowa City)	AFO	208
#*Harvey Driesen (Sioux Co.)	AFO	250

#*Michael and Karen Schieltz (Dubuque Co.)	AFO	361
#*Paul Rehder (O'Brien Co.) PAID IN FULL	AFO	375
# James Hogan; Hogan Brothers (Jones Co.)	AFO	104
* Craig Burns (Postville)	WW	156
* Midway Water & Lighting Co., Inc. (Marion)	WS	100
* Crestview Mobile Home Park (Ames)	WW	250
# Grand Prix Industries, Inc. (Kossuth Co.)	AFO	400
		38,736
	TOTAL	

The following penalties were collected by Revenue during the reporting period.

Daryl Hollingsworth	UT	250
James Harter	WW	148
Tony Mertens	AFO	400
Daryl Hollingsworth	UT	250
James Harter	WW	148
	TOTAL	1,196
	TOTAL MONIES RECEIVED	39,932

GENERAL DISCUSSION

UAA Update

Chuck Corell passed out the UAA's summary that will be included in the first batch for approval. The UAA's are broken down by stream segment not as a whole stream. About 30% of the stream miles assessed will be recommended to stay at A1. About 66 miles of streams will be designated as A2. And about 2% will be designated from A1 to A3.

Mary Gail Scott asked if the downgraded streams could be listed out in a separate table.

Chuck Corell said that we could do that.

Adam Schnieders said that they have held ten meetings with cities and answered their questions about the possible impacts. We have also met with the Sierra Club, IRWA and League of Cities.

Manure on Soybeans

Wayne Gieselmann said that the rulemaking will probably come before the commission at the December meeting.

Other

Catharine Fitzsimmons is leaving tomorrow morning to testify before the US Senate Committee on environment and infrastructure and her topic will be air quality on CAFOs. She is representing the position of the National Association of Clean Air agencies. Most of their positions are reflected in this department.

Wayne will be checking into the Boone County CAFO that was brought up during today's public participation and then send an e-mail to the Commissioners.

Charlotte Hubbell asked for an update on Household Hazardous wastes and the proposed contract for social marketing.

Mary Gail Scott asked Commissioners to write up five to seven accomplishments from this year as well as five-seven priorities for the upcoming year to include in the legislative report. I would also like us to develop a strategic plan for the commission so we can use it as a guide in the future. Please send those to Henry Marquard or myself.

NEXT MEETING DATES

October 1, 2007 – DNR Air Quality Building in Urbandale

ADJOURNMENT

With no further business to come before the Environmental Protection Commission, Chairperson Darrell Hanson adjourned the meeting at 6:05 p.m., Tuesday, September 4, 2007.

Richard A. Leopold, Director

Darrell Hanson, Chair

Suzanne Morrow, Secretary

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